Chairman vigorously dissented from this view and argued that steps to bring about reform ought to be taken immediately (8).

The Committee's recognition that the whole area of motor insurance and compensation required further detailed examination, paved the way for the appointment of a Royal Commission of Inquiry in 1967 ('The Woodhouse Commission') (9). It was felt that it would be easier to bring about reform in the area of worker's compensation and with that in mind, the Woodhouse Commission was appointed to report on "any need for change in the law relating to claims for compensation for damages in respect of persons incapacitated or killed in employment". The Commission decided, however, that even though its terms of reference related only to work accidents, they would be unable to deal with work injuries in isolation and in December 1967 recommended the introduction of a no-fault scheme of compensation for all types of injury by accident (10) stating that it "found it essential to examine the social implications of all the hazards which face the work force, whether at work or during the remaining hours of the day. Only by doing this we have been able to make recommendations which we believe can be handled comfortably by the country in terms of cost, and which will provide a co-ordinated and sensible answer to a series of interrelated and complex problems." (11).

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(8) IBID. at paragraphs 1,2 and 3 of the independent views of the Chairman, Mr. Wild.

(9) ROYAL COMMISSION OF INQUIRY. Report on Compensation for Personal Injury in New Zealand. December 1967. (the 'Woodhouse Report') Government Printer, Wellington N.Z. 1972.

(10) IBID. paragraphs 278-280.

(11) IBID. para. 34.

1. The Woodhouse Commission's recommendations

The Commission outlined five principles by which it was guided in making its recommendations:

(a) Community Responsibility: The Commission considered that the community as a whole had a responsibility to protect all citizens from the burden of losses sustained through accidental personal injury, where their ability to contribute to the general welfare by their work had been interrupted by physical incapacity due to the injury. This is the phylosophical basis of all schemes of social insurance.

(b) Comprehensive Entitlement: The Commission considered that a uniform basis of assessment would be appropriate in making compensation to all injured persons, regardless of the cause of injury, from a scheme financed by the community.

(c) Complete Rehabilitation: The Commission envisaged that the comprehensive scheme which they had recommended would have to be framed so as to promote physical and vocational recovery, while at the same time providing financial compensation. It stated that: "The consideration of overriding importance must be to encourage every injured worker to recover the maximum degree of bodily health and vocational utility in a minimum time. Any impediment to this should be regarded as a serious failure to safeguard the real interests of the man himself and the interest which the community has in his restored productive capacity." (12).

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(12) IBID. para. 58.

(d) Real Compensation: The Commission envisaged that compensation would be payable in the form of income-related benefits for lost income, for the whole of the period of incapacity and that any permanent bodily impairment would be regarded as a loss in itself, regardless of its effect on earning capacity.

(e) Administrative Efficiency: The Commission envisaged that the scheme which it was proposing would be efficiently administered with benefits being assessed consistently and being paid promptly (13).

The recommendations of the Commission were numerous and extensive, the main ones being that:

(a) common law rights in respect of personal injury should be abolished.

The Commission found that the New Zealand tort-based system was cumbersome and inefficient with administrative and other costs absorbing as much as NZ$40 for every NZ$60 paid out by way of damages;

(b) a continuous 24-hour cover should be provided and that the scheme should be compulsory with no scope for 'contracting out'.

The Commission recommended that the scheme should also cover housewives and other non-earners and that compensation should be provided in respect of all unexpected and undesigned bodily injury except sickness, disease or self-inflicted injury causing temporary or permanent, total or partial incapacity. The loss of some bodily function resulting in a temporary or permanent incapacity to work, as opposed to the actual loss of income itself would be the basis upon which compensation would be payable, so that if a working person were to sustain injury causing the loss of some bodily function which in turn caused a total incapacity to work, he would receive compensation equivalent to 80% of his previous income after tax under the proposed scheme and a proportionate amount for partial incapacity. The Commission felt that the limit of 80% would leave some scope for personal initiative. Maximum weekly compensation limits were recommended, with a lower weekly level for the first four weeks of incapacity. Where incapacity lasted for at least eight weeks, however, the compensation would be reassessed at the higher rate for the whole period. It was recommended that the amounts payable under the scheme should be adjusted every two years in line with increases in the cost of living. The Commission also envisaged that the scheme would be a flexible one taking account of any changes in a beneficiary's condition. Compensation for housewives and others without direct earning losses would, under the proposed scheme, be at the standard rate of social security sickness benefit for a single person for temporary incapacity and this amount would be increased in the case of permanent total incapacity. Compensation to this group would commence on the fifteenth day of the injury, but if incapacity continued for at least eight weeks, compensation would be back-dated to the day after incapacity occurred;

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(13) IBID. para. 52.

(c) there should be a change in the form of compensation payable

The Commission recommmended periodic payments, with lump sums being paid only for minor disabilities or where clearly warranted by the interests or pressing need of the person concerned. As regards assessment of the level of compensation, it was recommended that for permanent disability, this should be based on the guidelines of a revised schedule, compiled by a committee of medical and legal experts, weighted more in favour of serious disabilities.

(d) financial compensation, rehabilitation and accident prevention were of equal importance

The Commission recommended that a specified amount be set aside annually for the promotion of safety and for rehabilitation purposes. The Commission was of the opinion that financial compensation for the loss sustained through personal injury must not take precedence over efforts to restore a man to health and gainful employment or over measures to promote greater safety on the road;

(e) the scheme would be administered by an independent authority

The Commission recommended that the scheme be controlled by a Board of three Commissioners under the direct responsibility of the Minister of Social Security and that it be attached to his department for administrative purposes. The Woodhouse Commission estimated that the scheme which it was proposing would cost about NZ$ 38 million a year and that it would be financed firstly, by a uniform levy of 1% of gross wages on all employers, subject to an upper wage ceiling of NZ$ 8,000 a year, and secondly, by a levy of 1% of the earned income of the self-employed net of expenses, subject to an annual minimum levy of NZ$ 1.50 on all vehicle driving licences in addition to a levy on the owners of motor vehicles corresponding to the existing premiums paid by way of compulsory third party insurance.

2. The Accident Compensation Bill

The Woodhouse Commission's Report was received by the New Zealand public with less comment and discussion than was expected. The National Government, which traditionally supports private enterprise and business interests and which had appointed the Commission, was somewhat embarrassed by its Report. In the middle of 1968, a Committee of the Parliamentary National Party took up the task of studying the proposals. It submitted one Report to the Committee of the Parliamentary National Party at the end of 1968 and a supplementary Report in March 1969. As part of its study, the Committee re-examined the financing of the Woodhouse proposals the relationship of the proposed scheme to social security and the possibility of a phased introduction of the scheme.

The Cabinet decided that a White Paper should be prepared which would set out the form in which the scheme envisaged in the Woodhouse Report would operate, if adopted. The Woodhouse Report was presented to the House of Representatives on October 23, 1969. It set out the possible alternative approaches and generally confirmed the original costings of the Royal Commission bringing them up to date, to a figure of NZ$ 43 million a year.

A day after the White Paper was presented to the House of Representatives, the House agreed to set up a Special Parliamentary Committee on Compensation for Personal Injury under the chairmanship of Mr. G. F. Gair, M. P. in order that those groups wishing to make submissions would be able to do so. The Gair Committee consisted of six Government members and four opposition members and began hearing forty-five submissions from organizations and individuals in February 1970 and in general the submissions revealed that few organizations or individuals were satisfied with the arrangements then in force. There was, however, a widespread difference of opinion as to what they should be replaced with. Among others, the insurance industry, the legal profession, the Automobile Association the medical profession, and the National Council of Women made submissions to the Committee.

(a) The insurance industry

The insurance industry was opposed to what it regarded as the nationalisation of one-third of the industry but it had to respond in some way to the pressure for change and to the prevailing developments: it proposed an alternate road accident compensation scheme operated by private insurers on a no-fault basis for claims up to NZ$ 20,000 for pecuniary loss and NZ$ 500 for non-pecuniary loss. Within those limits, the industry was prepared to support the abolition of the common law action to aid speedier settlements and to discourage vexatious litigation in respect of smaller claims. The industry's proposal rejected the principles of community responsibility and comprehensive entitlement and put little emphasis on rehabilitation and accident prevention.

(b) The legal profession

The legal profession was divided in its views. The New Zealand Law Society was, however, categorical in stating that it was the unanimous view of its members that the scheme should be restricted to accidents occurring during the course of employment. The Society also objected to the Commission's recommendation that the proposed scheme should be under the direct responsibility of the Minister of Social Security and that it be attached to his department for administrative purposes. The Society argued that compensation should be based on 80% of future economic loss and that pain and suffering and loss of enjoyment of life should be taken into account. The Society made additional submissions relating to the procedure for the review of claim assessments arguing that a proviso should be included for permitting appeals to the Administrative Division of the Supreme Court.

(c) The Automobile Association

The New Zealand Automobile Association Inc. representing the fifteen constituent Automobile Associations of New Zealand opposed the introduction of the no-fault scheme on the grounds that:

(i) the irresponsible motorist would receive the same treatment as the ordinary careful person;

(ii) motor vehicle owners should not be required to shoulder additional burdens in the general public interest; and

(iii) the retention of the fault concept best served the motorist and general public by preserving personal responsibility and giving road accident victims full recovery rights for pain and suffering.

(d) The medical profession

The profession was of the opinion that under the tort-based system the delay in reaching a settlement was a hindrance to rehabilitation and resulted in delay in returning to work. The profession was, therefore, in favour of the proposals for introducing periodic payments in place of lump sum settlements, but was apprehensive over the possible adverse effects of the proposals on the doctor-patient relationship which could result from a distinction between certifying a person as injured and certifying him ill. An injured person would be entitled to earnings-related compensation, whereas a person certified as being ill would qualify only for flat-rate sickness benefit.

(e) The National Council of Women

The Council, not surprisingly, objected to the exclusion of housewives from the compensation scheme, but the Select Committee was not convinced by its submissions.

The Gair Committee's report of October 1970 (14) was tabled in the House of Representatives on November 12, 1970. It recommended partial implementation of the Woodhouse proposals by means of two no-fault schemes, both funded, one covering earners (including the self-employed) and the other road accident victims. No recommendations were made in respect of non-earners, mainly because of uncertainty as to cost. The Gair Committee stressed the importance which had earlier been placed by the Royal Commission on promoting a greater degree of safety, accident prevention and rehabilitation and expressed the hope that insurance companies would have a role as agents of the new statutory administrative authority.

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(14) HOUSE OF REPRESENTATIVES, NEW ZEALAND. Report of Select Committee on Compensation for Personal Injury in New Zealand, October 1970 Government Printer, Wellington N.Z., 1972 (the 'Gair Report').

The National Government accepted the committee's recommendations and a 160-clause Accident Compensation Bill was introduced into the New Zealand Parliament on December 15, 1971. It had taken almost a year to complete the drafting and preliminary work and yet when it was introduced, the Bill was in an incomplete form and many clauses had to be added. A second Parliamentary Select Committee heard submissions on the Bill throughout 1972 and a substantial re-drafting of its provisions was carried out in the interests of clarity.

The main criticisms levelled at the Bill during its passage through the House, related to the exclusion of non-earners, in particular - housewives, and to the limited availability of lump sum payments. The opposition Labour Party accused the Government of transforming the simple but far-reaching design conceived by the Woodhouse Commission into a complex compromise and were critical of the Bill in that it had moved away from the principle of 'community responsibility' towards a 'user-pays' approach.

The Bill finally passed the House in the final stages of the Parliamentary session in October 1972, receiving Royal Assent on October 20, and emerging as the Accident Compensation Act 1972. Late in 1972, when a new Labour Government took office, it introduced an amending Bill which became the Accident Compensation Amendment Act (No.2) 1973. It extended cover under a supplementary scheme to non-earners.

(B) ACCIDENT COMPENSATION ACTS 1972-1978

1. The legislation

The enactment of the 1972 Accident Compensation Act by the New Zealand legislature on October 20, 1972 signified a new and radical approach towards compensating personal injury and death sustained by accident. The Act has been described as being "the most ambitious reform of tort law in the common law world" (15) for it abolished the common law action for damages in respect of personal injury or death for those covered by the Act and, subject to some exceptions, extended coverage to New Zealand's three million inhabitants and every foreign visitor. The Act also abolished New Zealand's long-established workers' compensation system.

The 1972 Act made provision for the compensation of (i) earners who suffer personal injury by accident regardless of place, time or cause; (ii) all persons who in New Zealand, suffer personal injury by a motor vehicle accident; and (iii) certain dependants of those earners and motor vehicle accident victims where death results from the injury. Although the 1972 Act did not cover non-earners injured or killed in an accident unless they were victims of a motor vehicle accident, the Accident Compensation Amendment Act (No. 2) 1973 established a supplementary scheme to extend coverage to them. Both the 1972 Act and the 1973 Amendment Act came into effect on April 1, 1974.

The original legislation has now been supplemented by a number of amending Acts, namely the Accident

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(15) GEOFFREY W. PALMER: "Compensation for Personal Injury: A Requiem for the Common Law in New Zealand" (1973), 21 Amer. Jo. Comp. Law 1.

Compensation Acts of 1974, 1975 and 1978 (16), which have modified the scheme but have not altered its underlying principles.

The original 1972 Act, which is an Act of great length and complexity, is divided into eight parts: Part I establishes the Accident Compensation Commission and defines its functions, financial powers and responsibilities; Part II sets up an earners' compensation scheme delineating its coverage and sources of funds; Part IV carries out the same purpose for the motor vehicle accident scheme and Part V contains detailed provisions for calculating earnings for the purpose of both schemes; Part VI sets out all the different forms of compensation available under the Act; Part VII contains provisions governing the procedure for making claims, determining claims and making appeals, and Part VIII covers miscellaneous matters.

The scheme established by the Act has three objectives: (a) to promote safety in every walk of life; (b) to rehabilitate the injured; and (c) to provide prompt and realistic compensation without regard to fault.

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(16) 1974 Act: repealed the Criminal Injuries Compensation Act and from April 1, 1975 transferred to the Accident Compensation Commission the functions previously exercised by the crimes compensation tribunal in respect of compensation for criminal injuries; 1975 Act: came into force on October 10, 1975 and altered only the provisions relating to the assessment of damages; 1978 Act: outlined what is to be regarded as constituting New Zealand territory for the purpose of the Act and takes into account of persons who have coverage and who travel within New Zealand territory, from one island to another.

2. Administration

Part I of the Act established the Accident Compensation Commission (the "A.C.C") which consists of three members appointed from time to time by the Governor-General on the recommendation of the Minister of Labour (17). The A.C.C. has overall responsibility for administering the Act (18). In some instances the Commission makes decisions itself, whereas in others, particularly in regard to the raising of levies to finance schemes and in regard to the ceiling of compensation (19), it makes recommendations to the Minister of Labour. In the exercise of its functions and powers, the A.C.C. must give effect to the policy of the Government "as communicated to it from time to time in writing by the Minister" (20) and a copy of every such communication is required to be laid before Parliament (21).

A compromise was reached with the private insurance companies by permitting the A.C.C. to appoint insurance companies (22) as well as other bodies to act as its agents and the A.C.C. is empowered to delegate collection of levies and the handling and payment of claims to such bodies (23). Pursuant to these powers, the Commission appointed the State Insurance Office as agent for the handling of claims at certain delegated levels. The more difficult claims including assessments for permanent disability and assessments made under the lump sum provisions of the Act were reserved to the Commission. The Post Office is the statutory agent for the collection of motor vehicle levies.

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(17) one member of the Commission is required to be a barrister or solicitor of the Supreme Court of not less than seven years' practice (s.6, A.C.A 1972); members are appointed for three years and are eligible for reappointment (s.7, A.C.A. 1972) and they may be removed for disability, bankruptcy, neglect of duty or misconduct proved to the satisfaction of the Governor General (s.8, A.C.A. 1972).

(18) ss. 15, 16, 17, 18 and 19, A.C.A., 1972.

(19) s.15, A.C.A., 1972.

(20) s.20, A.C.A., 1972.

(21) s.20(2), A.C.A., 1972.

The A.C.C. is now organized into seven divisions dealing with compensation, finance, medical and rehabilitation matters, safety, research and planning, legal matters and administration.

3. Accident Prevention and Rehabilitation

Part II of the 1972 Act makes it "a matter of prime importance" for the A.C.C. to promote safety (24) and "to promote a well co-ordinated and vigorous program for the medical and vocational rehabilitation of persons who become incapacitated as a result of personal injury by accident" (25). The A.C.C. is required to establish a safety division

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(22) pursuant to s.25, A.C.A., 1972.

(23) pursuant to s.29, A.C.A., 1972.

(24) s.43, A.C.A. 1972.

(25) s.48, A.C.A. 1972.

(26) and a rehabilitation and medical division (27), in discharging its functions in this respect.

4. The motor vehicle accident scheme

Part VI of the 1972 Act provides that all persons "shall have cover under the motor vehicle accident scheme in respect of personal injury caused by a motor vehicle accident in New Zealand and death resulting therefrom", if the vehicle was registered and licensed or required to be registered and licensed (28). Coverage extends to accidents involving motor vehicles of visitors to New Zealand (29), towed, registered and unregistered vehicles (30), agricultural trailers (31) and invalid carriages (32).

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(26) s.45, A.C.A. 1972: In the year ending March 31, 1979, the Safety Division investigated safety management techniques such as attitude training, loss control, information systems, accident reporting and investigation including property damage and near misses, and the costing of accidents to enable future management decisions relating to safety measures to be made on a cost-effective basis. Financial grants for accident prevention activities amounted to NZ$340,917 in that year and among those funded were the Defensive Driving Council, the Safety Driving Awards Scheme and the Road Traffic Research Council.

(27) s.51, A.C.A. 1972: As at March 31, 1979 there were 42 officers employed by the medical and rehabilitation division attending the needs of 6937 claimants. In the year ending March 31, 1979, 136 claimants were returned to homes modified by the commission at a cost of NZ$121,000. It is probable that these claimants would otherwise have remained in institutional care for long periods, many of them indefinitely. The division is involved in a pilot project of building an apartment building in Wellington for disabled tenants. Much emphasis is being placed upon finding jobs for disabled accident victims.

The A.C.C. is required to establish and maintain among others: The Earners' Compensation Fund and the Motor Vehicle Compensation Fund (33). These funds are independently financed and self-supporting and each is charged with all amounts paid in claims which arise under each scheme. The exception to this rule is that the Earners' Compensation Fund is charged with all amounts paid on claims where people suffer personal injury in motor vehicle accidents which arise out of and in the course of the injured person's employment.

The Motor Vehicle Compensation Fund is supported by: (a) levies payable in respect of every motor vehicle required to be registered and licensed annually, and (b) annual levies on all holders of drivers' licences (including the driving permits of temporary visitors to New Zealand) (34). The levy on all drivers was set at NZ$2 per annum but this provision has not ben implemented. The Commission also has power to prescribe different levies for different classes of drivers (35) and to impose penalty rates on drivers with bad records (36).

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(28) s.92, A.C.A. 1972.

(29) s.93, A.C.A. 1972.

(30) s.94, A.C.A. 1972.

(31) s.95, A.C.A. 1972.

(32) s.96, A.C.A. 1972.

(33) s.31, A.C.A. 1972.

(34) ss.99, 100, A.C.A. 1972; see APPENDIX B1: A.C.C. LEVIES ON MOTOR VEHICLES, PRESCRIBED BY SECTION 99.

(35) s.100, A.C.A. 1972.

(36) s.100 (d), A.C.A. 1972.

Inflation

In theory, levies collected in a given year should be sufficient to pay compensation to the victims of that year's accidents, both as compensation during that year and in all future years over which many such claims will run. With the wide range of benefits that are made available under the scheme, and with no comparable scheme operating elsewhere in the world on which to form a basis for the determination of outstanding liabilities, the Commission is required under the Act to make a statement on such future liabilities, and in the process it must rely heavily on conjecture. The Commission is expected to predict inflationary trends and future compensation changes.

Is it likely that some claims may continue for 40 or 50 years or even longer, and that as time passes, the level of compensation paid will be periodically increased to match inflation. Yet the levy collected in the year that the accident occurred (to pay for both current and future compensation) would have been largely based on money values then prevailing. It is a difficult task to predict in 1980 what the value of the NZ$ will be in the year 2000 and accordingly to strike a 1980 levy which will encompass such inflationary changes. The probable result is that the Commission's invested funds (which now exceed NZ$185 million) will, if the rate of inflation continues to exceed the yield from investment income (37), be exhausted some years before the end of its claim liabilities and it is because of this that a number of future increases in current levies are inevitable.

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(37) In 1978/79 the commission's return on investments was 9.77% long-term, 11.18% short-term, and 10.18% overall. The New Zealand Government is presently reviewing the scheme in order to assess whether the present funded scheme should be replaced with a pay as you go scheme. (Quigley Committee established February 1979).

Motorcycle levies

Early in 1978 the Accident Compensation Commission came under criticism for what was alleged to be its attitude regarding levies on motorcyclists. In the face of some considerable criticism, the Commission remained silent until the Government announced what the levies would be for the ensuing year. The Chairman of the Accident Compensation Commission then explained that each year, the Commission must review its balances and, in the light of the compensation costs it has incurred, must consider whether existing levies will continue to be sufficient for the compensation of future accidents. Accordingly, annual recommendations have to be made to Parliament on what levy rates the Commission considers are needed to provide for the compensation of future accidents. The Commission made its annual recommendations to Government in March 1978 in which it recommended that the levy on motorcycles of over 60 c.c. capacity should be increased from NZ$9.90 to NZ$60.00.

The reason that such a recommendation was put forward by the Commission is that the Commission keeps separate accounts for each of the eight major motor vehicle types. Levies paid by the owners of each type of motor vehicle are credited to separate accounts. Compensation paid out for accidents which involve a motor vehicle of a certain category are debited from the account corresponding to that category. The Commission was of the opinion that with a scheme of self-insurance, each type of motor vehicle category should be self-supporting so that levies paid by owners of private cars, for example, should be sufficient to meet the compensation payable to persons injured as a result of the use of a private car.

The Chairman of the Commission, Mr. K. L. Sandford, pointed out that:

> ".... it is impractical to expect that every type of motor vehicle which is not numerous, must be self-supporting. Taken to its extreme, there could be a type of road vehicle of which there were only three in the country. Those three could not be expected to provide all the compensation that might become payable if a driver of one of those vehicles was permanently injured. In the case of small groups, therefore, the Motor Vehicle Scheme as a whole, must be looked to and this necessarily involves some degree of subsidy by the owners of other kinds of motor vehicles.
>
> But large groups, such as private cars, trucks and motorcycles, should aim to be self-sufficient within themselves". (38)

TABLE III overleaf shows the A.C.C's experience over the three years from April 1, 1974 to March 31, 1977. It shows the total amount of levies received from the major types of motor vehicles. In the fourth column it shows cash compensation paid out. In the sixth column, it shows the amount that has been arithmetically calculated that the Commission must keep aside for the future compensation still to be paid for the accidents which occurred in those three years.

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(38) Report of the Accident Compensation Commission, July 1978.

TABLE III

(SOURCE: ACCIDENT COMPENSATION COMMISSION'S REPORT - JULY 1978)

ACCIDENT COMPENSATION COMMISSION

Detail of three-year experience — April 1, 1974 - March 31, 1977

No. of Vehicles	*Class*	*Levies Received $ millions*	*Claims Paid Out*	*Fund Cash Balance*	*Est. O/S Liabs. $ millions*	*Difference $ millions*
1,210,275	Cars incl. Rentals	54.009	15.458	38.551	21.429	17.122
3,185	Taxis	0.586	0.076	0.510	0.127	0.383
232,202	Trucks	10.156	1.185	8.971	1.264	7.707
4,518	Buses	0.875	0.144	0.731	0.250	0.481
111,979	Tractors	0.664	0.458	0.206	0.321	-0.115
108,732	Motorcycles	2.467	6.869	-4.382	11.110	-15.492
354,224	Trailers	0.668	0.663	0.005	0.056	-0.051
	Miscellaneous	5.020	—	5.020	—	5.020*
2,025,115		70.417	24.833	49.612	34.557	15.055

*Note — the miscellaneous income includes $4.028 million received prior to 1 April 1974.

In the 'private cars' category, the Commission received NZ$54 million in levies. It paid out NZ$15.4 million in compensation and actuarily assessed that these past claims will require NZ$21.4 million in the future. Therefore, the total compensation demand was NZ$36.9 million. The above figures suggest that in the period concerned, cars paid NZ$17 million more than required, if they are to be regarded as a solely self-supporting group. For the same period, however, motorcycles show a deficit situation of NZ$15.5 million.

The Commission argued that the Motor Vehicle Compensation Fund as a whole appeared to be holding a balance of NZ$15 million more than needed, but that this was only possible because of levies contributed by private cars, trucks and others subsidizing the compensation of those injured in motorcycle accidents, tractor accidents etc.

In the case of motorcycles, the Commission made recommendations to Government by dividing motorcycles into two categories: those above and those below 60 c.c. This is a division which had been used for many years. The Commission's findings indicated that if motorcycles over 60 c.c. were in the future to be totally self-supporting, the Commission would require a levy of NZ$88 per/year from that group. In response to this, the Government's decision in May 1978 was to construct different c.c. classifications and to fix a levy on each group, as shown in TABLE IV below.

In formulating the motorcycle levies, the Government no doubt took into account social and economic factors (which the Commission is not entitled to do) such as the recognition that motorcycles are a form of transport which involves moderate capital outlay and represent a saving in fuel consumption.

TABLE IV

ACCIDENT COMPENSATION ACT

ACCIDENT COMPENSATION COMMISSION LEVIES ON MOTOR VEHICLES PRESCRIBED BY SECTION 99

(As approved by Cabinet on 4 May 1978)

Type of Vehicle	New Rate	Old Rate
Motor Cycles (engine capacity over 125 c.c.) including "Learner" motor cycles	NZ$25.00	NZ$9.90
Motor Cycles (engine capacity 61 125 c.c.) including "Learner" motor cycles	NZ$15.00	NZ$9.90
Motor Cycles (engine capacity 60 c.c. or less) including "Learner" motor cycles	NZ$ 5.00	NZ$1.35
Power Cycles (i.e. vehicles fitted with pedals for alternative propulsion) including "Learner" power cycles	NZ$ 5.00	NZ$1.35

Once levies are fixed at less than the rate arithmetically required to make each type of vehicle group self-supporting, this necessarily involves requiring subsidy by other motor vehicle owners and opinions always differ as to whether subsidy should occur or not. It can be justified if it is regarded as sufficient for the Motor Vehicle Scheme as a whole to be self-supporting on the grounds that all users of the road are deemed to be contributing to a fund for the benefit of the motoring community as a whole.

Results of the Motor Vehicle Compensation Fund

In the year ending March 31, 1979, the levies from motor vehicle owners amounted to NZ$23 million. In respect of the 11,422 new claims received that year, payments totalling NZ$8.9 million were made. After continuing payments covering claims arising in prior years were made and after including investment income earned, the fund balance stood at NZ$72.6 million as at March 31 1979, and that sum constituted the amount available to meet future costs of claims already lodged but uncompleted.(39).

5. Compensation

The compensation provisions contained in Part VI of the 1972 Act are common to both the Earners' Scheme and the Motor Vehicle Scheme. Compensation falls into several categories, as follows: medical and related benefits; compensation in respect of loss of earnings; compensation for non-pecuniary losses; compensation in the event of death.

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(39) See APPENDIX B2: MOTOR VEHICLE COMPENSATION FUND Statement for the Year Ended 31 March 1979.

(a) Compensation: medical and related benefits

Included in medical and related benefits is the payment of conveyance to hospital or to a medical practitioner (40), as well as damage to teeth, artificial limbs or aids, clothing or spectacles being worn at the time of the accident (41). Where medical treatment is not paid for by the state, there is provision for payment to be made by the A.C.C. (42). Also included is the cost of essential care and attention of the injured person and any identifiable actual and reasonable expenses incurred by any person giving help to the injured person while he is incapacitated or while taking action consequent upon his death (43).

(b) Compensation: loss of earnings

An injured person who has coverage under the Earners' Scheme and who is injured in a motor vehicle accident qualifies for earnings-related compensation for loss of earning capacity in the same way as if the accident had occurred under different circumstances. Earnings related compensation is not otherwise available under the Motor Vehicle Scheme, except where it is payable for loss of potential earning capacity (44).

For the day of the accident and the six days immediately thereafter, where the accident arises "out of and in the course of employment", the employer must pay the employee a full week's wage (exclusive of overtime) (45). This includes an employee injured at work or on the way directly to or from work. Where an employer fails to pay any amount he is required to pay, the A.C.C. may pay the amount and recover it from the employer (46). No earnings-related compensation is payable under the Accident Compensation Act for the first seven days following the accident where it occurs outside work (47) or to a self-employed person. In all cases, medical expenses are met from the relevant fund.

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(40) ss.107, 108, 109, A.C.A. 1972.

(41) s.110, A.C.A. 1972.

(42) s.111. A.C.A. 1972.

(43) s.121, A.C.A. 1972.

(44) s.118, A.C.A. 1972.

Where a person is incapacitated for more than seven days, the A.C.C. is required to pay earnings-related compensation "at the rate of 80% of the amount of his loss of earning capacity due to the injury for the time being" (48). A special provision ensures that a person working full-time on low earnings can receive up to 90% of his earnings. Earning capacity is determined "by deducting the amount that he is capable of earning directly from his personal exertions during the period from the amount of his relevant earnings for a like period" (49). The person must be "endeavouring to work reasonably to the extent of his capacity" (50). Part V of the 1972 Act laid down detailed provisions for calculating earnings for the purpose of assessing earnings-related compensation (51) and gave the Commission discretionary powers to depart from them. The Accident Compensation Amendment Act 1975, however, altered this position by giving the Commission wide discretionary powers, particularly where the earnings of the self-employed are being assessed, and then laid down guidelines for the Commission to follow. In effect, the discretionary powers enable the Commission, in respect of short-term incapacity, to assess prospective earnings instead of having to adhere too rigidly to pre-accident earnings. The general practice of the Commission is to take relevant earnings to be the normal average weekly earnings at or about the time of the accident. For the self-employed, the basis is normally the average weekly earnings during the last financial year. Earnings which can be taken into account in assessing earnings-related compensation were, at the beginning of 1977, subject to a maximum of NZ$300 a week. Potential earning capacity is taken into account for injured employees under the age of 21, apprentices or trainees, and those injured when under the age of 16 or, in certain circumstances, before taking up an occupation. For this purpose, the maximum weekly amount at the beginning of 1977 was NZ$72 dollars, with a discretionary power for the Accident Compensation Commission to increase the amounts by up to 50% (52).

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(45) s.112, A.C.A. 1972.

(46) s.112, A.C.A. 1972.

(47) The government view is that employers' sick pay schemes should be encouraged and that resources should be concentrated on more serious disabilities. This device not only avoids a great deal of administrative work, but it is also intended to draw employers' attention to accident levels in their undertakings and to encourage them to institute appropriate safety measures.

(48) s.113(1)(a), A.C.A. 1972.

(49) s.113 (2), A.C.A. 1972.

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(50) s.113 (2), A.C.A. 1972.

(51) ss.103-106, A.C.A. 1972.

(52) s.117, A.C.A. 1972.

Decisions by the A.C.C. relating to assessment of earnings must be notified to the claimant who has a right to ask for a review (53).

Where a person does not completely recover from his incapacity, and so soon as the Commission considers that his medical condition has stabilized and all practical steps have been taken towards his retraining and rehabilitation, the A.C.C. is required to make a written assessment of the nature and extent of his permanent incapacity, and the amount paid to him thereafter is 80% of his permanent loss of earning capacity (54). In assessing the loss of earning capacity, the opportunities for employment which can reasonably be held to exist for the injured person must be taken account of.

After the date of assessment the earnings-related compensation cannot be reduced by reason of any reduction in earning capacity, but the A.C.C. may make a further assessment if the person's condition has deteriorated since the last assessment (55).

Payments in respect of earnings-related compensation and for loss of potential earning capacity are required to be made at such intervals, not exceeding one month, as the A.C.C. thinks fit (56). In practice, such payments are made on a weekly or fortnightly basis, and they are subject to income tax. The A.C.C. may "in very exceptional circumstances" commute these either wholly or in part, into a lump sum payment, but commutation is not normally made if this would involve additional financial support from public funds (57).

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(53) s.113(8) & (9), A.C.A. 1972.

(54) s.114 A.C.A., 1972; the percentage may be raised by Order in Council under s.114(4), A.C.A. 1972 (to take account of changes in living costs).

(55) s.114(5) A.C.A., 1972; there are special provisions for compensation in the case of subsequent accidents to the same person - s.115, A.C.A. 1972.

Normally, earnings-related payments of compensation cease at the age of 65 (58), the age at which age benefits and superannuation becomes payable under the social security system. Special provisions apply if injury occurs between the ages of 60 and 70. Compensation is payable for five years if the injury occurs after the age of 60 but before the age of 65. It is payable until the age of 70 if it occurs after the age of 65, and for one year if it occurs after the age of 69.

The A.C.C. may reduce, postpone or cancel earnings-related compensation where the person receiving it is in a hospital or penal institution (59).

(c) Compensation: non-pecuniary loss

Compensation for non-pecuniary loss is payable to non-earners as well as earners. Earners receive it in addition to any earnings-related benefits they may be receiving. In early 1977, a lump sum not exceeding NZ$7,000 was payable to persons who had suffered permanent loss of any part of the body (60). Assessments of impairment are made in accordance with the second schedule to the 1972 Act which was drawn up with the advice of an expert medico-legal committee and which sets out the percentage of the maximum sum payable for most common impairments (61). Where the impairment is not covered by the schedule, the A.C.C. must determine the appropriate percentage (62).

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(56) s.151(3), A.C.A. 1972.

(57) s.133, A.C.A. 1972.

(58) s.128, A.C.A. 1972.

(59) s.129, A.C.A. 1972.

(60) s.119, A.C.A. 1972.

Section 120 of the 1972 Act provides for further compensation of non-economic loss. Subject to a maximum of NZ$10,000 (at the beginning of 1977) the Commission may award, as it thinks fit, compensation in a lump sum for loss "of amenities or capacity for enjoying life, including loss from disfigurement" and for "pain and mental suffering including nervous shock and neurosis" (63). The loss, pain or suffering, having regard to its nature, intensity, duration and other circumstances must be of sufficient degree to justify payment. The sum payable under this provision is required to be paid as soon as practicable after the medical condition of the person has stabilized or after the expiration of two years from the date of the accident, whichever is the earlier. In making the assessment the Commission must have regard to the injured person's knowledge and awareness of his injury and loss (64).

The A.C.C. does have the power to make a higher award in special circumstances but the award, together with any lump sum awarded for permanent loss or impairment of bodily function may not exceed NZ$17,000 (1977 figure) in the aggregate. Lump sum payments made under this section are not subject to income tax.

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(61) for example, 80% for total loss of an arm; 17% for deafness in one ear; 14% for the total loss of an index finger.

(62) s.119(3) & (4), A.C.A. 1972.

(63) s.120(1)(a) & (b), A.C.A. 1972.

(64) s.120(7), A.C.A. 1972.

Compensation for non-economic loss provided by s.120 soon became the subject of considerable interest by the legal profession since it provided one way of increasing compensation payments and because it is not subject to any automatic formula. However, because of lack of precedent lawyers did have some difficulty in finding a basis on which to debate whether a Commission award was proper or not when the scheme first came into operation but today, there are a number of precedents upon which lawyers can rely as to the quantum of award, and awards which have been either unchallenged or confirmed by the Accident Compensation Appeal Authority range as follows (65):

Paraplegia: Always the maximum of NZ$10,000
Loss of hand (dominant arm): NZ$6,000-8,250
Loss of thumb (dominant arm): NZ$1,000-2,500
Amputation below elbow
(non-dominant arm): NZ$4,750-7,250
Above-knee amputation: NZ$6,250-8,500
Below-knee amputation: NZ$5,500-7,250
Loss of one eye: NZ$1,750-3,750

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(65) see also the following decision of the Accident Compensation Appeal Authority: Decision 26 (Reference No.21/2/63) (1977) 1 N.Z.A.R. 245 and APPENDIX B3: SUMMARY OF UNREPORTED DECISIONS OF THE ACCIDENT COMPENSATION APPEAL AUTHORITY, s, 120 A.C.A.

Some seemingly inequitable decisions relating to s.120 have been made; for example, a 74 year old pensioner who sustained a skull fracture in a motor cycle accident was held not to be entitled to compensation because any pain and suffering and loss of enjoyment of life experienced when in hospital and during subsequent recovery was of insufficient degree to justify payment (66): such a decision does nothing to enhance public confidence in New Zealand's compensation system.

Other than compensation afforded by s.120, the 1972 Act also permits compensation for pecuniary loss not related to earnings, such as any "quantifiable loss of service" sustained by a member of the person's household as a result of the accident (67), the cost of constant personal attendance required by that person (68), funeral expenses

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(66) ROYAL COMMISSION ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY (U.K.) Cmnd. 7054-III para. 880 March 1978 (HMSO London).

(67) s.121, A.C.A. 1972: see Accident Compensation Appeal Authority Decision 48 (Ref.85/77) 1 N.Z.A.R, 288.

(68) s.121, A.C.A. 1972 .

(69) and, subject to a number of exceptions (70) actual and reasonable expenses, and proved losses, necessarily and directly resulting from the injury or death.

(d) Compensation: fatal cases

Earnings-related compensation is payable to the dependants of a person who dies as a result of personal injury by accident (71), provided that the deceased was covered by the Act as an earner (72).

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(69) s.122, A.C.A. 1972: see Accident Compensation Appeal Authority, Decision No.1 (Ref. 21/2/6) 1 N.Z.A.R. 89 and Decision 48 (Ref.85/77) 1 N.Z.A.R. 288.

(70) s.121(1) excludes the following:
(a) expenses or losses in respect of damage to property; or
(b) expenses or losses incurred after the death of the injured person in respect of the administration of his estate; or
(c) the loss of opportunity to make a profit; or
(d) loss arising from inability to perform business contract; or
(e) losses that have not, for the time being, actually occurred whether or not the amount thereof is ascertainable before it occurs; or
(f) expenses or losses in respect of or towards payment of which compensation is otherwise payable under the Act or specifically prohibited by some other section of the Act.

If the dependency was total, a widow or widower is entitled to one-half of the earnings-related compensation that would have been payable to the deceased had he survived and been permanently and totally incapacitated (73). If the dependency was partial, a lesser rate is payable according to the degree of dependence (74). Each minor who was totally dependent on the deceased receives one-sixth of the deceased's rate of compensation (75). If both parents are dead, the rate is one-third (76). The rate of compensation for dependants other than widows, widowers and children is discretionary (77).

If the educational needs or other special circumstances justify it, payments in respect of a child of the deceased may continue beyond the normal period.

In addition to earnings-related compensation, lump-sum payments are payable to dependants who survive the deceased by 48 hours. In early 1977, a widow (or widower or common law spouse) received NZ$1,000 if totally dependent on the deceased; each totally dependent child received NZ$5,000 (78). Smaller sums are awarded for partial dependence.

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(71) s.123, A.C.A. 1972.

(72) s.123(8) A.C.A. 1972: No earnings-related compensation is payable to dependants of a non-earner but they may claim lump sums, expenses, and loss of support from the termination of a pension or annuity.

(73) s.123(1)(a)(i), A.C.A. 1972.

(74) s.123(1)(a)(ii), A.C.A. 1972.

(75) s.123(1)(b), A.C.A., 1972.

(76) s.123(3), A.C.A., 1972.

(77) s.123(1)(c), A.C.A. 1972.

Compensation normally ceases at the age of 65. Upon remarriage, a widow or widower receives a lump sum, in lieu of any further earnings-related compensation. If he or she is under the age of 63 at remarriage the lump sum is equivalent to two years earnings-related compensation at the rate applicable at the date of the remarriage, with a lesser amount for a person who remarries at the age of 63 or 64 (79).

(e) Self-inflicted injury

There is normally no compensation payable in respect of any personal injury which a person wilfully inflicts on himself, or intentionally causes to be inflicted on himself, or for death due to suicide, though the Commission has power to apply compensation that he would otherwise have been entitled to, for the maintenance and education of his dependants in case of special need. A dependant of a deceased is, however, barred from claiming compensation if convicted of the murder or manslaughter of the deceased, except where it is proved to the satisfaction of the Commission that the convicted person had no intention of killing or causing grievous bodily harm to the deceased person or to any other person.

The only exception to this is that suicide is covered where it was the result of a state of mind that was the result of personal injury by accident, in respect of which the person had coverage. There is a statutory presumption that, in the absence of proof to the contrary, the death of any person is not due to suicide.

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(78) s.124, A.C.A. 1972.

(79) s.125, A.C.A. 1972.

6. Procedure and Appeals

Part VII of the 1972 Act contains provision for reporting accidents, making claims and appeals.

Claims for compensation must be made without delay and in any event within 12 months of the relevant accident or death (80). Decisions on compensation are made by the Commission or one of its agents (81), and any person dissatisfied with a decision of the Commission may apply within a month to the Commission for a review (82). The Commission or the Hearing Officer conducting a review may receive evidence irrespective of whether it would have been admissible in a court of law, and all evidence in the Commission's papers and all other evidence obtained by the Commission or Hearing Officer is required to be made available to the applicant for review. The review decisions are administrative rather than judicial decisions and are not treated as binding precedents.

From the decision of the Commission or its Hearing Officer, there lies an appeal to the Accident Compensation Appeal Authority (83), which consists of a single judge who is required to be a barrister or solicitor of not less than seven years' practice (84). The Authority may appoint an assessor with expert knowledge to assist it (85). It must sit in public and may rehear the evidence. It may also award costs but where appeals are not allowed, awards of costs cannot be made against the appellant unless the Authority is of the opinion that the appeal was frivolous, vexatious or ought not to have been brought.

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(80) s.149, A.C.A. 1972.

(81) s.151, A.C.A. 1972.

(82) s.153, A.C.A. 1972.

(83) s.162, A.C.A. 1972.

(84) s.155, A.C.A. 1972.

An appeal from the Authority lies to the Administrative Division of the Supreme Court, with leave of the Authority or the Court (86), on a question of law or of general importance (87). An appeal then lies from the decision of the Supreme Court, with leave on case stated, to the Court of Appeal on a question of law only (88).

(C) COMMENTARY ON NEW ZEALAND'S PURE NO-FAULT SCHEME

With the New Zealand scheme now in place and operational for six years, there has been opportunity to gather some opinions about its performance from various interested groups (89).

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(85) pursuant to s. 160, A.C.A., 1972 if the appeal involves matters of a professional, technical or specialised nature.

(86) s.168, A.C.A. 1972.

(87) s.168 (2), A.C.A. 1972.

(88) s.169, A.C.A. 1972.

(89) ROYAL COMMISSION ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY (U.K.); Cmnd. 7054-III paras. 914-923, March 1978, (HMSO, London).

1. Employers

The Employers' Federation has expressed concern at the burden placed upon employers in having to continue payment of wages during the first week of incapacity arising from injury at work. In at least 30% of claims, incapacity lasted for less than a week and a further 30% of claims for less than two weeks. The employers would prefer the Commission to take responsibility from the outset of a claim, even though this would involve an increased contribution levy. Some employers alleged that since the inception of the scheme days lost through injury by accident had increased, sometimes coupled with a decrease in sickness claims which were less attractive as the benefit rate was lower.

2. Medical profession

One of the main difficulties is that doctors are required to record an opinion as to whether incapacity was due to personal injury by accident when more often than not they have only the patient's word as to how the incapacity had been caused. In response to this, the Commission is considering a possible change of wording on the cerificate to 'due to injuries consistent with the patient's description of the accident'. Some doctors complained of an increasing tendency of patients to seek treatment for trivial injuries; others pointed out that the doctor was paid for each visit and medical incomes had increased markedly since the inception of the scheme. The Medical Association of New Zealand expressed fears that the increase in form filling relating to patients and the supply of information to the Commission in individual cases were damaging to the confidentiality of the relationship between doctor and patient. Generally speaking, however, the profession was optimistic that existing problems could be solved.

3. Legal profession

The majority of lawyers were against the abolition of the common law action and held that, as a minimum, fault should be recognized to some degree in road accident cases. As regards adjudication, lawyers felt that the Commission failed to give adequate reasons for its decisions, that there should be an independent tribunal for appeals at the initial stage, and that specific provision should be made for meeting the costs of legal representation.

4. Insurance industry

The private insurance industry considered itself to be no more than an interested spectator. Its members regretted that the industry had not been invited to play a part in the administration of the scheme and there was dissatisfaction with the treatment of outstanding liabilities for the insurers were required to meet pre-April 1974 claims from their own resources. Inflation had to be faced without any possibility of rating adjustments since premium payments had ceased, and the position was aggravated by the fact that premium rate adjustments had always lagged behind by about one year. With introduction of New Zealand's no-fault scheme, the overall loss of income of the industry amounted to between 20% - 30%.

5. General public

The scheme appears to have met with general acceptance by the New Zealand public. Perhaps the most serious criticism was advanced by the National Council of

Women because of the denial of compensation for pecuniary loss to housewives. That organization was seeking the adoption of a notional wage as a basis for periodic payments to injured housewives and submitted that the cost of such payments should be met from general revenue. Many people from all walks of life criticized the provisions of compensation to those who are injured in an accident while committing a crime, and especially to drunken drivers. The provision of compensation to those who are engaged in activity which is against the interests of the public and who are thereby injured themselves was seen by many to be (with some justification) morally, emotionally and socially unacceptable.

(D) FUTURE DEVELOPMENTS

With the abolition of the common law action for damages in respect of personal injury and death sustained by accident, the common law principles which had until then governed the adjudication of claims were set aside by the enactment of the 1972 Act. The Act, therefore, had to perform the mammoth task of covering every eventuality that might arise. It had to spell out everything that could be spelled out and an Act of great length and complexity was inevitably the result. To add to its complexity, the original legislation has now been supplemented by a number of amending Acts. The Commission acknowledges that simplification of the Act is required. A major survey of the basic premises of the Act is presently under way, and it is hoped that from it will emerge rewritten parts and sections, and eventually a new consolidated statute, expressed, it is hoped, with less complexity than was considered necessary in the original enactment. Even though a great deal of time and effort was expended in the preparation of the original legislation, certain problem areas and deficiencies have come to light with the operation of the scheme.

1. First-week compensation

It is likely that some changes will be effected as to first-week compensation. Employers have voiced their objections at having to bear the cost of such compensation directly. The extent of changes will be affected by political considerations, taking into account the likely reactions of employee and employer organizations.

2. Overseas coverage

At present, New Zealanders are covered overseas for the purposes of their work. There is a school of thought which is of the opinion that all New Zealanders overseas should be covered. However, recognizing that over 300,000 New Zealanders go overseas annually, the administrative and financial burdens of investigating and paying the accident claims of possibly 10,000 to 13,000 of such people annually would be onerous. Overseas agency networks would have to be established; medical and hospital costs at overseas rates would have to be faced. Modified schemes extending a more limited coverage to those travelling overseas are possible, and some of these are being examined by the A.C.C.

3. Accident during criminal conduct

The New Zealand public does at present have certain misgivings about the payment of compensation to those injured while committing a crime, especially drunken drivers. The inclusion of more types of serious criminal conduct which would lead to disentitlement is not a major matter and it is rather more a question of drawing the line between which type of crime will lead to disentitlement and which will not. The introduction of this type of provision will re-introduce the idea of fault on a limited scale and the fact that it is being called for is evidence that the no-fault principle when taken to its extremes, as in New Zealand, does lead to some inequities. The payment of compensation to those who are injured while committing a crime is morally, emotionally and socially unacceptable. It is likely that some change will be brought about in this area to reflect public opinion.

4. Compensation under s.114, A.C.A. 1972

It will be remembered that section 114 provides for lifetime periodical payments to represent a claimant's permanent loss of earning capacity. The Commission's experience with this section so far reveals serious difficulties in its application. One of the problems lies behind the theory, admirable as it seemed, that a weekly amount should be fixed once and for all and increased periodically to match inflation, subject only to further increase if the claimant's earning capacity deteriorates. The sum payable is never reduced even if the claimant's earnings become so handsome that it was obvious the accident has ceased to have any limiting effect on his earning capacity. The justification for this approach was the belief that rehabilitation and initiative might be inhibited if a claimant thought that his compensation would be reduced should he become a more successful earner. At present, the Commission is considering recommending that permanent compensation should fluctuate according to the demonstrated facts of reduced earning capacity, if any.

The other problem associated with s.114 is the problem of how to make a present, but lifetime, periodical award, intended to represent future loss of earning capacity, with any likelihood of accuracy. At least the common law lump sum payment for future economic loss is intended as a compensatory sum and is not calculated according to a strict arithmetical formula. Some changes in regard to s.114 are inevitable on the way: these will give the A.C.C. more flexibility in altering payments of compensation according to the increase or decrease in the claimant's earning capacity.

5. Lump sums

The Commission regards both s.119 and s.120 of the A.C.A. 1972 and compensation paid thereunder as one of its burdens. The calls for more lump sum payments to be provided or for existing ones to be extended are often ignored. The A.C.C. appears to hold the view that it would not be feasible for it to undertake carefully researched discretionary assessments in tens of thousands of cases annually. The view of the Commission appears to be that since it is not possible to equate pain, disfigurement and loss of enjoyment of life with money, any attempt to do so should be abandoned. This is a radical position to take and if it is the position of the A.C.C., it is likely to be objected to vigorously.

6. The self-employed

From the outset, considerable difficulty has been experienced by the A.C.C. in assessing the loss of earnings of the self-employed. Treatment of these claims has only become acceptable as a result of two schemes recommended to Parliament by the A.C.C., and adopted: (a) the right to pay fair and just compensation without strict arithmetical verification; and (b) providing a minimum compensation base for certain self-employed on very low earnings. It is, however, unlikely that the problems of the self-employed have seen their end. The problem appears to be particularly acute in the farming community and arises because earnings-related compensation is based on tax-assessed income and there are obvious anomalies where a farmer has various deductions and a relatively low tax assessment. The problem is further confused where a person's annual income depends upon exertion in a particular season such as a shearer or freezing worker. If a farmer is hurt at a quiet time of the year, has he lost anything?

One suggested solution is for the self-employed to nominate their own assessment of their income and to pay levies accordingly.

The implementation of New Zealand's pure no-fault compensation system is the most radical reaction to the shortcomings of the tort compensation system. It is the only scheme of its kind in existence in the common law world although the shortcomings of the tort compensation system have been recognized in other jurisdictions. Whereas New Zealand chose to abolish tort completely, in other jurisdictions it is more common to find an alliance between no-fault and tort. Both systems have something to offer in the field of compensating victims of motor vehicle accidents and the next chapter seeks to examine just two of many such 'mixed tort/no-fault' systems, namely those of Saskatchewan and British Columbia.

CHAPTER FOUR

THE 'MIXED' SYSTEM

CHAPTER FOUR - THE 'MIXED' SYSTEM

Whereas the pure no-fault compensation system in place in New Zealand is an extreme and radical reaction to the deficiencies of the tort system, there is a less radical remedy to be found in the mixed tort/no-fault system. The pure no-fault system involves a fundamentally different approach to compensation in which there is an absolute shift in emphasis from individual to collective responsibility. Compensation becomes an integral part of the social welfare program, and compensation is provided according to rules and regulations based on social welfare principles which have no regard to fault.

Conversely, within systems based on a mixture of tort and of no-fault principles tort is diminished but only to the extent that no-fault ideas replace tort law in areas in which tort was weak. In other words, the aim of the mixed system is to forge a working relationship between tort and no-fault, attempting to draw upon the advantages of each system while at the same time attempting to avoid the shortcomings of each. Mixed systems have been said to be a 'peaceful coexistence' between the principles of tort law and no-fault law (1). Today, compensation schemes based on the mixed system are becoming increasingly more common (2), so much so that it has even been recommended that such a scheme be implemented in the United Kingdom - the very source from which the underlying principles of tort law emerged (3).

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(1) LINDEN: "Peaceful Coexistence and Automobile Accident Compensation" (1966), 8 Can. Bar J. 5.

(2) see ROYAL COMMISSION ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY, Cmn. 7054-III, (Overseas Systems of Compensation) March 1978 (HMSO London).

There are numerous jurisdictions in which schemes based on a mixture of tort and no fault ideas have been implemented (4) and because it is not possible to examine each of them in turn, those in place in the Canadian provinces of Saskatchewan and British Columbia have been singled out for closer analysis in this chapter.

With the introduction of the Saskatchewan scheme in 1946 and the British Columbia scheme in 1977, it was recognized in each jurisdiction that although the tort system does have certain deficiencies it also has positive attributes. It was recognized that the deficiencies of tort are correctable, and in any event not serious enough to warrant the total abolition of the tort mechanism. Both the Saskatchewan and the British Columbia schemes are operated (as are all mixed schemes) on the premise that everyone is entitled to compensation to a degree, without regard to fault. This is not, however, achieved at the expense of those with deserving tort claims.

(A) THE SASKATCHEWAN AUTOMOBILE ACCIDENT INSURANCE ACT

In 1946, it seems the people of Saskatchewan were willing to experiment. Saskatchewan was hit particularly badly by the depression years of the 1930's and the world was just beginning to recover from the turmoil of the World War II. The government of Saskatchewan, elected in 1944, immediately began an ambitious program of re-organizing the social and economic priorities of the province. Almost unnoticed in the flurry of world activity at the time, the Saskatchewan Government Insurance Office (the "S.G.I.O.") was established.

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(3) ROYAL COMMISSION ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY, Cmnd 7054-I, chapter 18, March 1978 (HMSO London).

(4) See: a brief point-form comparison of no-fault benefits under Canadian plans (APPENDIX C1), and under United States plans (APPENDIX C2).

The S.G.I.O. was established as a Crown Corporation in 1944 for the purpose of offering a general insurance coverage to the people of Saskatchewan. In the 1946 session of the province's legislative assembly, the S.G.I.O. was empowered to administer the Automobile Accident Insurance Act (the "A.A.I.A.") (5) which was enacted to provide compensation to victims of motor vehicle accidents through an automatic accident compensation plan designed to provide reasonable compensation for losses arising out of motor vehicle accidents, regardless of fault. Under the Saskatchewan legislation and under legislation similar to it, there is a definite although not an absolute shift in emphasis from individual to collective responsibility.

Prior to the introduction of the A.A.I.A., only public carriers were required to carry compulsory liability insurance while the rest of the motoring community remained outside such compulsive measures. In Saskatchewan, the problem was serious, for in 1946 only 12% of Saskatchewan motorists carried road insurance. In various jurisdictions throughout North America, unsatisfied judgment funds were being established because of the inability of the uninsured to meet tort damage awards.

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(5) S.S. 1946, c. 11. now R.S.S. 1978, c.A-35.

In proposing a departure from the tort system, the Inter-departmental Committee of Saskatchewan, which had been established by the Minister in charge of the S.G.I.O. to consider the problem of compensating motor vehicle accident victims, in its preliminary report of November 2, 1945, reported as follows:

"In constructing the framework for the proposed Act, the Committee has been guided by the following principles:

(1) That the widest possible protection should be afforded to the public having regard to the income from premium collected;

(2) That Public Liability Insurance does not afford this protection, for it permits a third party to recover from the insured only if he can prove negligence on the part of the insured; it does not in itself provide compensation to the negligent insured driver; it does not protect members of the family of the driver. Public Liability Insurance does not afford protection against hit and run drivers.

(3) That the rates for each general class of vehicle should vary directly as the risk experience of that group varies and that they should be fixed to give the greatest possible protection to those injured but at the same time, be within the capacity of each owner or operator of the vehicle to pay.

(4) That the competence of the provincial legislature to require every motorist to take out a policy of insurance with The Saskatchewan Government Insurance Office is constitutionally permitted, provided that it does not prohibit insurance

companies carrying on business under Dominion incorporation, from doing business in this province".

1. Scope of the scheme

The coverage provided by the present-day Part II of Saskatchewan's Automobile Accident Insurance Act (6), relating to compensation for personal injury without regard to fault, was the sole coverage provided by the original Act, which came into effect on April 1, 1946. Under Part II of the Act (7):

> ".... every person is hereby insured in the amounts hereinafter specified against loss resulting from bodily injuries sustained by him directly .... through accidental means .... provided that such injuries are suffered as a result of:
>
> (a) driving, riding in or on, or operating a moving motor vehicle ..... in Saskatchewan, or
>
> (b) collision with or being struck, run down or run over by a moving motor vehicle .... in Saskatchewan".

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(6) R.S.S. 1978, c.A-35, ss.20-35.

(7) IBID s.22

Since 1946, the following coverages have been added to the Act:

(1) Collision .... April 1, 1947

(2) Third-party liability .... April 1, 1948

(3) Fire and theft .... April 1, 1949

(4) Comprehensive (collision, fire and theft, and miscellaneous coverages) .... April 1, 1951

Coverage under the Act extends to persons involved in motor vehicle accidents in Saskatchewan and, with restricted conditions, to residents of Saskatchewan involved in accidents while riding in a Saskatchewan licensed vehicle on a public highway outside the province anywhere within the borders of Canada or the continental United States. The accident insurance provided by Part II of the Act is made subject to a number of statutory conditions recited in s.35 of the Act (8) as well as a number of statutory exclusions from claiming benefits (9). A notable exception is that which relates to operating a motor vehicle or other vehicle while under the influence of intoxicating liquor or drugs. If an injured person was under the influence of alcohol or drugs, he loses the protection of the plan. Every pedestrian is automatically covered and entitled to benefits for injuries suffered when struck by any motor vehicle anywhere in Saskatchewan.

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(8) s.35 is reproduced in APPENDIX C3.

(9) contained in s.34 of the A.A.I.A. which is reproduced in APPENDIX C3.

2. Proof of insurance

When licence plates are bought and a driver's licence obtained in Saskatchewan, automatic insurance operates. The insured does not receive an "insurance policy" as the legal description and terms and conditions of the insurance are contained in the Automobile Accident Insurance Act. "Proof of insurance" must be carried when driving and under the A.A.I.A., both the vehicle registration certificate and the driver's licence are certificates of insurance. Outside of Saskatchewan, the registration certificate is proof of "financial responsibility" in case of an accident. In all Canadian provinces, and in the continental United States, this card qualifies as a Motor Vehicle Liability Insurance Card. If the driver's licence or registration is suspended or revoked, the insurance coverage that goes with the certificate is also revoked.

3. Premiums under the A.A.I.A.

An insurance premium, varying with the type and age of vehicle, is payable on every motor vehicle licensed in Saskatchewan. This premium is required to be paid when the licence is purchased. Every vehicle is assigned to a category rating and its age (10). The premium payable in respect of each vehicle is calculated according to its category rating and its age (11).

In addition, there is a premium payable for each class of operator's certificate. Within each class, premiums may vary according to the applicant's age and record of convictions for traffic offences under municipal by-laws, provincial Vehicles Acts and Highway Traffic Acts and under the Criminal Code of Canada.

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(10) see APPENDIX C4: CLASSIFICATION OF PRIVATE PASSENGER VEHICLES (ORDINARY USE).

(11) see APPENDIX C5: PRIVATE PASSENGER CARS (ORDINARY USE) INSURANCE PREMIUMS ($).

Convictions for certain offences under The Vehicles Act or municipal by-laws have been assigned rating-unit values (12). Criminal Code of Canada convictions are assessed rating units according to the length of suspension and are assessed on the date that the person becomes eligible to drive after suspension. A record of convictions for each driver is maintained for each calendar year. The basic insurance premium is determined by the number of rating units accumulated over a 36 month period prior to the renewal month. The total number of rating units are then assessed on each driver's licence (13). A driver does have his accumulated rating units reduced by one-half if he is able to avoid traffic convictions for a full twelve months immediately prior to the commencement date of his new licence period.

Part I of the Act provides for two types of rate adjustments in addition to the rate schedule contained in the regulations. There is provision for a surcharge on the insurance certificate of a driver who was responsible for an accident which resulted in a payment under the provisions of the Act in excess of C$100. In 1980, an additional premium of C$50 was assessed against a driver's licence if he was 50% or more to blame for such an accident (14). The A.A.I.A. also enables the S.G.I.O. to impose an additional premium, if it considers the applicant, as the owner or operator of a motor vehicle, disproportionately hazardous to himself or to the public (15).

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(12) see APPENDIX C6: RATING UNITS FOR CONVICTIONS AND SUSPENSIONS.

(13) see APPENDIX C 7: CLASSIFICATION OF DRIVERS

(14) A.A.I.A. R.S.S. 1978, c.A-35, s.6 and Regulations made thereunder.

4. Benefits: (1) Automatic Compensation for Personal Injury

The Saskatchewan Government Insurance Office stresses that the A.A.I.A. benefits for automatic compensation for personal injury or death are not an attempt to place a monetary value on the tragedy involved and that no amount of money paid could equal the human costs of traffic accidents. Compensation is offered merely to help victims and their families to cope with some of the financial burdens of such a tragedy.

Death benefits: These benefits are available when a motor vehicle accident victim dies within 90 days of the accident (16), or within two years if he is totally and continuously disabled (17). Benefits are payable as follows:

(i)	to the primary dependant	C$7,500
(ii)	to each of the secondary dependants ..	C$1,500

(subject to a total of $15,000 for one death) (18). If the victim is a wife, and no benefits are payable in respect of her death under any other provision in the Act, C$3,000 is payable to her husband under s.27(5)(b) of the Act. If the victim is survived by a dependent or partly dependent child over the age of 18 years or by a dependent or partly dependent brother, sister or parent, $2,000 is equally divided among such survivors (19). If there is more than one primary dependant, only one can be so classed for the purpose of determining the amount payable under the Act, and the others will be considered secondary dependants. Nonetheless, the total paid will be divided equally between members of the same class (20).

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(15) IBID, s.8 and Regulations made thereunder.

(16) A.A.I.A., R.S.S. 1978, c.A-35, s.23(2) (See APPENDIX C3).

(17) IBID, s.23(3).

(18) IBID, s.27(2).

If a child of less than eighteen years of age is fatally injured in a motor vehicle accident, the amount of the payment to the parents is dependent upon the age of the child (21). When an unmarried person aged 18 years or over is killed and no benefits are otherwise payable, the parents are paid C$1,000 (22).

Funeral expenses: The sum of C$300 in lieu of funeral expenses in all motor vehicle accident deaths is payable under the Act (23).

Compensation for Impairment of Function of Body: Lump sum payments are made for a wide variety of permanent disabilities, for example, amputation, uncorrectable limitations of movement of certain joints, impairment of sight or hearing and the more serious facial disfigurements. Payments are made according to the degree of disability; the maximum amount payable is C$10,000 (24). The degree of disability is established by consulting the very comprehensive list of disabilities contained in the Act (25). To give some practical examples: the amount payable for any disability remaining after treatment is determined by the degree of disability of the injured part of the body in relation to the body as a whole, so that total ankylosis (stiffness) of the shoulder, with the arm at the side and the scapula (shoulder blade) fixed, provides for payment of 40% of the maximum of C$10,000. In respect of a stiff shoulder joint, therefore, C$4,000 is paid under the Act. Total ankylosis of a finger at the knuckle joint, in mid-position, is rated as a 3% impairment of the function of the body, for which the claimant would be entitled to 3% of C$10,000 which is C$300.

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(19) IBID, s.27(5)(a).

(20) IBID, s.27(3).

(21) IBID, s.27(5)(c).

(22) IBID, s.27(5)(d).

(23) IBID, s.26(1)(b).

(24) IBID, s.23(6).

Payment is provided also on a percentage basis for loss of function of any other joints in the arms and legs (hands, feet etc.), or for restricted movement of the spine. Furthermore, provision is made for compensation in the case of permanent damage to the eyes, ears or nose, for loss of teeth, or for scarring (disfigurement) of the face. For example, for a defect in vision of not less than 20/40 in one eye, 23% of C$10,000 (C$2,300) is paid; amputation of entire foot allows 30% (C$3,000); loss of arm between shoulder and elbow, 50% (C$5,000); loss of arm at shoulder 85% (C$8,500).

If a victim of a motor vehicle accident suffered the loss of his arm below the elbow, the loss of three incisor and two molar teeth, complete deafness in one ear and a facial scar of over 2 1/2 inches he would be compensated under the A.A.I.A. as follows:

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(25) IBID, s.23(6) see APPENDIX C3: DEGREES OF DISABILITY UNDER THE A.A.I.A.

Shoulder: loss of arm below elbow 40%	C$4,000
Ear: complete deafness in one ear 8%	800
Teeth: loss of 3 incisors (@0.15%each).0.45%	45
Teeth: loss of 2 molars (@0.1% each)...0.20%	20
Face: scar over 2 1/2 inches 6.50%	650
TOTAL ....55.15% =	C$5,515

Supplementary allowances: Sums up to C$4,000 may be paid at the discretion of the Saskatchewan Government Insurance Office to assist victims with their out-of-pocket expenses for which they have no other means of reimbursement, e.g. ambulance, special drugs nursing and mileage costs (26).

Weekly allowance: In certain circumstances, a weekly payment may be made to alleviate financial hardship caused by loss of income (27). If total disability prevents a person from earning his living, a weekly allowance of up to C$60 is payable for a period of not more than two years. This payment will be continued if it can be established that the victim is permanently incapable of being suitably employed. These benefits are reduced by any payments made under the Old Age Pension or Canada Pension Plan. A payment of C$30 per week for partial disability may be granted for a period of up to two years less any period that the victim has been drawing payments for total disability.

A housewife who is totally disabled is entitled to receive a weekly payment of C$60 or if partially disabled, C$30 for a maximum of twelve weeks.

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(26) A.A.I.A. R.S.S. 1978, C.A-35, S.26(1)(a) (see APPENDIX C3).

(27) IBID, s.24.

A person not included in the above categories but disabled is entitled to receive a weekly payment of C$30 while confined to hospital, bed or wheelchair, up to a total of 52 weeks (28).

Arrangements may be made to have disability compensation paid in a lump sum (29) and there is a waiting period of seven days after an accident before any compensation is payable (30).

5. Benefits: (2) Comprehensive Coverage (31)

Under Part III of the A.A.I.A. comprehensive coverage insurance is provided against loss of or damage to vehicles and their equipment from any cause except as indicated in the Act. Insured perils include collision or upset, fire, theft, windstorm, hail, etc. There is a C$200 deductible on private passenger cars and farm trucks; the deductible varies on other classes of vehicle. "Deductible" refers to the first part of any loss that the insurer will not cover and which must, therefore be covered by the insured. Under this part of the Act, coverage is for no more than the actual cash value of the vehicle and only this amount may be claimed. Entitlement extends to the repair or replacement of the vehicle so that the insured ends up in the same position as he was in before the accident. Depreciation on the vehicle is taken into account when its "cash value" is assessed. Some specified types of damage are excluded under s.38 (32) and Part III insurance is subject to the statutory conditions contained in s.39 of the Act (33).

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(28) A.A.I.A., R.S.S. 1978, c.A-35, s.24(7) (See APPENDIX C3).

(29) IBID, s.24(9).

(30) IBID, s.24(8).

(31) See APPENDIX C 8 PART III A.A.I.A.

6. Benefits: (3) Bodily Injury and Property Damage Liability

Every driver or vehicle owner who is found legally "at fault" for injury, death, or property damage caused by his negligence or poor judgment, must pay for the losses he has caused. Liability insurance is provided under Saskatchewan's scheme in Part IV of the Act (34) to motorists within the province. This coverage is compulsory to an amount of C$35,000 and any amounts recovered under Part II of the A.A.I.A. are deducted from sums paid under the liability part of the Act.

Bodily injury gets "first call" on C$30,000 of this amount, and property damage claims get preference on the remaining C$5,000 (35). If there is money left over from either type of claim, it can be applied to the other, until the full amount is used. Under s.48 of the Act, the bodily injury liability and property damage liability insurance provided by an owner's certificate under Part IV of the Act is made subject to certain statutory conditions (36).

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(32) IBID.

(33) IBID.

(34) A.A.I.A., R.S.S. 1978, c.A-35, ss.40-60 (See APPENDIX C9: PART IV OF THE AUTOMOBILE ACCIDENT COMPENSATION ACT).

(35) IBID, s.42(2).

(36) IBID, s 48; (See APPENDIX C9).

Hit and Run Accidents: Under this Part of the Act (37), when a hit-and-run driver causes injury, death, or more than C$200 worth of property damage, the Saskatchewan Government Insurance Office "stands in" for the absent driver and assumes his legal liabilities arising out of the accident. The limit of liability is still C$35,000, and is subject to the other conditions of the Act. Notice of such an accident must be given to S.G.I.O. within 28 days of its occurrence if a claim is intended. The damage is required to be reported to the police immediately.

Collision with an uninsured vehicle: Some vehicles using the roads of the province may be uninsured; injury, death, or property damage caused by these vehicles qualifies, in some cases, for compensation under the A.A.I.A. (38). The maximum amount available for this purpose is $35,000. The S.G.I.O. has the right to recover from the uninsured driver any money which it pays out on his behalf. If the uninsured motorist refuses to pay his driver's licence or any registration certificate which he holds may be suspended (39).

7. Benefits: (4) Additional Auto Package Policy

Many Saskatchewan motorists require more protection than the maximum coverage provided by compulsory insurance under the A.A.I.A., and for those who desire more coverage, the S.G.I.O. offers supplementary insurance known as the "Package Policy". It is designed to meet the needs of the average car and farm-truck owner. Available for an extra premium charge, the Package Policy extends the motorist's coverage as follows:

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(37) IBID, s.51.

(38) IBID, s.54

(39) IBID, s.54(4)

Bodily Injury (liability)	C$200,000
Property Damage (liability)	inclusive
Passenger Hazard (liability)	limit

Reduces the C$200 deductible on collision, upset, and plate glass to C$25, C$50 or C$100 for private passenger cars and farm trucks.

Removes the C$200 deductible on all other comprehensive coverages (fire and theft, miscellaneous).

The purchase of the S.G.I.O. Package Policy is optional; furthermore, a motorist is free to purchase any type of extension policy from an insurance agency of his own choice.

8. The Automobile Accident Insurance Act and Tort

The accident insurance benefits provided by Part II of the A.A.I.A. and the comprehensive insurance against accidental damage to the insured vehicle under Part III of the Act, become payable without regard to fault. The right of action of the injured person is, however, not barred. The amounts paid under Parts II and III must be credited towards any judgment obtained against the owner and driver of any vehicle involved in the accident that is registered in the province and driven by one who is authorized and qualified by law to drive. The Act also proceeds on the premise that certain losses ought to be recouped for the benefit of the Fund through subrogation (40). These include the losses caused by the fault of:

(1) an unqualified and unauthorized driver;

(2) a driver under the influence of intoxicating liquor or drugs;

(3) anyone responsible for the operation of a motor vehicle to which is attached a trailer or semi-trailer not registered (and hence not insured under the Act) in the province;

(4) any person who is engaged in what might generally be called the garage business and who is not the owner of the vehicle causing or sustaining the loss or damage. (This attempts to differentiate between what might be called a typical traffic risk from the kind of risk that is more typical to operation of the garage business).

(5) the owner or operator of a vehicle that is not insured under the Act;

(6) a person who has not contributed to the Fund as an owner or operator of any vehicle involved in an accident and who because of this or because he has breached a condition of coverage, is not entitled to recover anything under Part II or Part III of the Act.

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(40) IBID, s.80.

The S.G.I.O. may take action in its own name to recover the amount of its interest where the circumstances give rise to the right of subrogation or it may join with the insured person to bring one action for the recovery of damages, including the amount of the subrogated interest.

(B) THE BRITISH COLUMBIA AUTOMOBILE INSURANCE ACT

In January 1966, the Government of British Columbia ordered an inquiry by a Royal Commission on Automobile Insurance, to inquire into and to report upon "concerning monetary losses and expenses resulting from motor vehicle accidents involving persons adverse in interest and into feasible and sound proposals for moderation thereof ..."(41). The Commission reported on July 30, 1968 (42), advocating the abolition of the common law action for damages arising out of motor vehicle accidents and the establishment of a comprehensive pure no-fault program in its place. On March 18, 1969, a special legislative committee which had been established to review the

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(41) Order in Council (B.C.) No.239, January 25, 1966.

(42) REPORT OF THE BRITISH COLUMBIA ROYAL COMMISSION ON AUTOMOBILE INSURANCE (1968). See also ISON: "Highway Accidents and the Demise of Tort Liability" (1969), 47 Can. Bar Rev. 304 and ATIYAH: "British Columbia Royal Commission on Automobile Insurance (1969), 32 Mod. L. Rev. 547.

Commission's recommendations, released its report (43). It differed from the Royal Commission in suggesting that the right to sue for damages in respect of personal injury or death be retained. On January 1, 1970 a limited no-fault scheme operated by private insurers was introduced (44) until the Insurance Corporation of British Columbia, a Crown Corporation, took it over on March 1, 1974 (45).

1. Scope of the scheme

With the enactment of the Automobile Insurance Act (the "A.I.A.") (46) the Province of British Columbia introduced a motor vehicle accident insurance program popularly known as "Autoplan". It is operated under the A.I.A. and under extensive Regulations made pursuant to the Act (47) and is administered by the Insurance Corporation of British Columbia (the "I.C.B.C").

Basic Compulsory Autoplan Coverage

Vehicles licensed in British Columbia are required to carry a minimum of C$100,000 Third Party Liability Autoplan insurance and such coverage is provided by Section

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(43) REPORT OF THE SPECIAL COMMITTEE TO STUDY THE REPORT OF THE ROYAL COMMISSION ON AUTOMOBILE INSURANCE (1969).

(44) Insurance Act, S.B.S. 1969, ss.325 and 326 and Regulation 267/69 made thereunder.

(45) see SCHMITT: "Automobile Insurance in British Columbia" (1974).

(46) now the Automobile Insurance Act, S.B.C. 1973 c.6

(47) see Office Consolidation of Regulations 1-27 of the A.I.A. Vancouver, B.C. May 1979

A of the British Columbia policy of insurance. The owner of the insured vehicle, and any other licensed operator who drives with the owner's permission is covered. If legally liable, the insured is responsible for covering any claims in excess of C$100,000 although additional insurance may be purchased. With a C$100,000 limit, claims for bodily injury or death have priority on the first C$90,000 and claims for property damage have priority on the $10,000 balance. The same ratio applies where Third Party Liability insurance is extended by additional insurance coverage (48).

No-Fault Coverage

Section B of the policy deals with accident benefits in respect of which the insurer agrees to compensate regardless of fault, anyone who sustains bodily injury or death directly and independently of all other causes, by an accident arising out of the use or operation of a motor vehicle.

Some situations are excluded from 'No-Fault' accident coverage (49). The driver responsible for an accident causing bodily injury or death is not eligible for such benefits in circumstances in which:

(1) an accident is the result of:
  - -an attempt to avoid police action,
  - -suicide, or attempted suicide,
  - -involvement in a race, or speed test,
  - -involvement in unlawful trade or transportation;

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(48) see Part VI Regulations 1-27 of the A.I.A. S.B.C. 1973, c.6

(49) See Part VII Regulations 1-27 of the A.I.A., S.B.C. 1973, c.6

(2) the driver involved is either unauthorized or unqualified to drive;

(3) the vehicle involved is owned by the Crown, in the Right of Canada;

(4) costs are covered by another medical, hospital, dental or insurance plan (so that payment for the same expense cannot be collected twice);

(5) the insured is receiving benefits that are greater than Autoplan benefits under the Workers' Compensation Act or under the Unemployment Insurance Act;

(6) a non-resident of British Columbia is injured or killed in a vehicle not insured by Autoplan (e.g. a visitor from California injured in British Columbia by a motorist from Alberta is not eligible for Autoplan benefits);

(7) the injury or death is caused directly or indirectly by radioactive material.

Valid Autoplan insurance affords protection throughout all of the Canadian Provinces and Territories and in the United States, including Hawaii and Alaska. Autoplan does not, however, extend coverage to Mexico.

2. Proof of insurance

Owner's certificate - When a licence and insurance is purchased in British Columbia, an Owner's Certificate is issued. This is a two-part document consisting of an Owner's Certificate of Insurance and Vehicle Licence, and a Certificate of Registered Ownership. These are required to be readily available in the vehicle and failure to produce them when requested by a police officer makes one liable to a fine. The Canada Inter-Provincial Motor Vehicle Liability Card, referred to as the 'pink card' is found on the back of the Insurance part of the Owner's Certificate, and is accepted as proof of insurance throughout Canada and the United States.

Licence Number Plates - Licence number plates or decals and insurance are issued concurrently in British Columbia. Commencing with the purchase of renewal insurance on March 1st of each year, new plates are issued for all B.C. motor vehicles required to be insured. The licence plates are assigned to a vehicle and they become the owner's responsibility. They must be retained by the original owner if the vehicle ownership changes and this includes situations in which a vehicle is sold or replaced, declared a total loss or repossessed. In such cases, the plates may be reassigned to a replacement vehicle if it is the same type, or they may be surrendered to an Autoplan agent or Motor Licence Office for cancellation and refund on the unused portion of licence fees and insurance premium. Failure to remove and retain the plates can result in someone else's driving the vehicle while it is still insured in the name of the previous owner, who, in the event of an accident, may be held responsible for damage.

3. Premiums

In British Columbia, insurance premiums have traditionally been determined by four factors: the driver, the vehicle, its use and the territory in which it is principally operated. In December 1978, however, the Government of British Columbia requested the I.C.B.C. to investigate means of removing those factors used in determining motor vehicle insurance rates over which an individual has no control. These factors are age, sex, marital status and possibly even territory. Such a plan involves the redefinition of traditional classifications of motor vehicle insurance which has been based on identified groups of insureds which have a similar claims cost experience. It is a well established statistic that as a group single, male drivers under 25 years of age are involved in a greater number of accidents and more serious accidents than married male drivers, or female drivers of the same age and marital status. The new approach to assessment of premiums, however, is based on the premise that a young car owner who performs safely on the road should be afforded the opportunity to buy insurance coverage at the same cost as an older person who performs safely.

The I.C.B.C. introduced the 'F.A.I.R.' program in 1980, under which the assessment factors of sex and marital status are removed. In 1981, age will no longer enter into the assessment of premiums and by 1985 when the program is completed, the use of the vehicle and its value will be the main factors considered in determining premiums.

The Vehicle - Generally, damage to a large, an expensive, or a new vehicle is significantly more costly to repair than damage to a smaller, less expensive or older model, so that the vehicle value, type and year are taken into account in the assessment of premiums. However, the value of the vehicle is taken into account only in the purchase of 'Own Damage' coverage.

The use of the vehicle - Because generally, the more a vehicle is used the greater the risk of accident, use is considered in the following rate classes:

(1) Driving for pleasure only;

(2) Driving to and from work;

(3) Driving for business purposes;

(4) Driving for commercial and business purposes;

The 'pleasure' classification allows not more than 1,000 miles (1,600 km.) of business driving a year, and driving to and from work on not more than four days a month.

The Territory - The Province is divided into insurance rating territories which are established on the basis of considerations such as driving conditions, population density, accident frequency and repair costs. Rates are determined according to the following six territories:

TERRITORY:
'A' Greater Vancouver
'B' Greater Victoria and Southern Vancouver
'C' Upper Vancouver Island and the Adjacent Mainland
'J' Fraser Valley
'M' Southern Interior
'T' Northern B.C.

A vehicle is required to be rated according to the territory in which it is principally used, so that for example, if an insured's place of residence or business is in Territory 'J', but the vehicle is operated principally in Greater Vancouver (Territory 'A'), the rates applicable will be those for Territory 'A'.

Territory will be removed as a rating factor in conjunction with the F.A.I.R. program, over the next five years.

Penalty Point Program - Motorists in British Columbia are penalized for violation of traffic regulations through a demerit point system which is similar to that operated in Saskatchewan. The Insurance Corporation of British Columbia assesses a penalty premium based on the number of demerit points recorded on a person's driving record by the B.C. Motor Vehicle Branch. The penalty premium is levied in addition to any vehicle insurance premium and is paid into the Autoplan Fund which insures all licensed vehicles in the Province. A driver's record of penalty points and record of offences against the Criminal Code of Canada are maintained by the B.C. Motor Vehicle Branch.

Penalty points are calculated for a three year period and assessed annually on the first day of the second month prior to the driver's birthday. Payment is due on the driver's birthday and no penalty is assessed for less than an accumulated six points. A pardon of three points is granted in each of the first two years of the assessment period and the maximum number of points for premium consideration is 20. In addition, if points recorded in the three year period total 10 or more, a fee of $25 for each 10 points accumulated is assessed by and payable to the Motor Vehicle Branch. Failure to pay this assessment can result in the suspension of the driver's licence.

A defaulting driver who is not able or chooses not to pay the penalty point premium may surrender his licence and earn credits for the time surrendered. For example, a driver with 26 points would pay C$1,200 over the next three years but if he chooses to surrender his licence to the Superintendent of Motor Vehicles for those three years, he would pay nothinng and have a point-free record at the end of that time (50).

Premium adjustments: (a) Safe Driving Vehicle Discount

The Safe Driving Vehicle Discount Program is designed to encourage safe driving habits and to emphasize that vehicle owners are responsible for the safe operation of their vehicles at all times, regardless of who may be driving. The ultimate aim of the Discount scheme is to reduce the number of accidents causing deaths and injury. The Safe Driving Vehicle Discount is a tangible way of rewarding vehicle owners whose policy records are free of claims for which any payment has been made for collision, property damage or bodily injury. Safe Driving Vehicle Discounts are paid from the Autoplan Fund and before such a Discount may be claimed, the claimant must have been paying a premium into the Fund for a minimum of six months before a discount can be claimed.

1980 Discounts were earned on the following basis:

(1) 32.5% three years discount is deducted from the premium if a claim-free record has been maintained for the three year period immediately preceding date of application;

(2) 25% two year discount is deducted from the premium if a claim-free record has been maintained for the two year period immediately preceding date of application;

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(50) See Part III, para.3.05, Regulations 1-27 of the A.I.A., S.B.C. 1973, c.6.

(3) 15% one year discount is deducted from the premium if a claim-free record has been maintained for the one year period immediately preceding date of application.

Eligibility for the Discount is not vitiated by 'Hit and Run' claims, No-Fault accident benefit claims, claims against Comprehensive or Specified Perils coverage, or any claim under C$10.

Premium adjustments: (b) Safe Driving Incentive Grant

The 1980 Grant was equivalent to a 25% discount of the 1979 Autoplan insurance premium and is made available to accident-free single male drivers under 25. To be eligible for the 1979-80 insurance year, an insured must:

(1) have been a single, male driver under 25 years of age and an owner or principal operator during the period from March 1, 1979 to February 29, 1980, of a vehicle rated in one of a restricted specified class;

(2) not have accumulated more than five 'penalty points' between October 1, 1978 and September 30, 1979;

(3) not have owed the I.C.B.C. any money;

Furthermore, the insured's vehicle must not:

(4) have been involved in an accident between October 1, 1978 and September 30, 1979 for which any payment has been made for collision, property damage or bodily injury, excluding No-Fault accident benefits;

(5) have been part of a fleet;

(6) have been used for delivery purposes unless it is owned and operated by a single male driver under the age of 25.

With the introduction of the F.A.I.R. program in 1980, the reduction in premiums for the single male vehicle owner or principal operator under 25 years of age, under the Safe Driving Incentive Grant will be discontinued. Instead, he will be eligible for certain reductions under the F.A.I.R. program.

Premium adjustments: (c) Discount for handicapped drivers -

Handicapped persons whose vehicles are insured in certain specified rate classes determined by the use of the vehicle and the age of the principal operator, are eligible for a discount of 25% of their basic premiums. Eligible handicapped persons include:

(1) the blind owner, or lessee, of a motor vehicle which is used regularly for the transport of the owner to or from a place of employment, education or training; or

(2) an owner/operator who has suffered the loss of use of a limb requiring a motor vehicle operated by him to be equipped with hand controls; or

(3) an owner/operator who is entitled to a rebate of Gasoline Tax under British Columbia's Gasoline Tax Act for one of the following reasons:

(i) he has suffered the loss of a limb, or

(ii) he is permanently confined to a wheelchair, or

(iii) he is in receipt of a 100% disability pension received during active service in any way while in Her Majesty's Service.

4. Benefits: (1) Basic Compulsory Autoplan Coverage (51)

Basic Autoplan insurance covers the owner of the insured vehicle and any other licensed operator who drives with the owner's permission for C$100,000 Third Party Legal Liability.

5. Benefits: (2) 'No-Fault' Accident Benefits (52)

Regardless of who is at fault in an accident, Autoplan insurance automatically covers claims for injury to occupants of the insured vehicle and to any pedestrians who were hit by that vehicle.

No-Fault' Accident Benefits include the following:

(1) Reasonable medical and rehabilitation expenses subject to a limit of C$100,000 for each injured person.

(2) Disability payments- of up to C$100 per week to a totally disabled person who is unable to work for eight days or more because of injuries. Payments

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(51) See footnote 48 *supra.*

(52) See footnote 49 *supra.*

for disability continue for the duration of the disability, or for 104 weeks, whichever period of time is the shorter. Under certain conditions, payments may be continued for the life of the injured person.

(3) Death Benefits- commencing 60 days after the death of the insured resulting from a motor vehicle accident. Payment is made to a surviving spouse, or to a surviving dependent, on the following basis:

In the ~~case~~ of the death of the Head of the Household (defined as the spouse contributing the larger income to the household):

C$5,000 - to the spouse, or other dependent survivor, plus

C$1,000 - to each additional dependent survivor, other than the first, plus

C$ 100 - a week for 104 weeks, to the spouse of other dependent survivor, plus

C$ 25 - a week for 104 weeks, to each additional dependent survivor, other than the first.

In the case of the death of the Spouse of the Head of the Household:

C$2,500 - to the head of the household, or other dependent survivor. plus

C$1,000 - to each additional dependent survivor, other than the first, plus

C$ 100 - a week for 104 weeks, to the head of the household, or other dependent survivor, plus

C$ 25 - a week for 104 weeks, to each additional dependent survivor, other than the first.

In the case of the death of both Head of the Household and of the Spouse, dependent survivors equally share:

C$5,000 - for the loss of the head of the household, plus

C$2,500 - for the loss of the spouse, plus

C$1,000 - for each additional dependent survivor, other than the first, plus

C$ 100 - a week for 104 weeks, for each additional dependent survivor, other than the first, plus

C$ 25 - a week for 104 weeks, for each additional dependent survivor, other than the first.

In the case of the death of dependent children the following benefits are divided and paid equally to both parents:

C$ 500 - for each dependent loss child up to 5 years of age, plus

C$1,000 - for each dependent lost child from 5-9 years of age inclusive, plus

C$1,500 - for each dependent lost child from 10-18 years of age inclusive, plus

C$1,000 - for each dependent lost child 19 years or older.

(4) Funeral expenses- to a limit of C$1,000.

6. Uninsured and Unidentified motorists

All residents of British Columbia are protected by Autoplan for personal injury or property damage caused by the negligence of an uninsured motorist. For any one accident, regardless of the number of persons injured or the number of claims for property damage, C$100,000 is the maximum limit of liability. If the claimant has coverage under the Workers' Compensation Act, any government or other plan of insurance, there can be no claim under the uninsured motorist provisions.

Autoplan insurance also protects a victim of a hit and run accident in which the person responsible for the damage cannot be identified, up to a total maximum of C$100,000 for death and personal injury, and pays a property damage claim less C$150, or the amount of the collision 'deductible' carried by the insured, whichever is the lesser amount. Coverage applies to both residents of British Columbia and non-residents provided that the non-resident resides in an area which offers substantially the same protection to a resident of British Columbia. A resident of British Columbia who suffers injury or death as a result of a hit and run accident, may (or his dependents may, as the case may be) apply to the I.C.B.C. for financial assistance, provided the loss occurred in an area which does not offer any form of unidentified motorist protection. All the Provinces of Canada have an 'unsatisfied judgment' or similar fund for this purpose. In any event, the I.C.B.C. must be satisfied that all reasonable efforts have been made to determine the identity of the owner, or driver, and that the same is not ascertainable. Notice of hit and run accidents must be given to the Insurance Corporation as soon as possible after it occurs and in any event within six months of its occurrence. Hit and run accidents are required to be reported to the police immediately (53).

7. Additional, optional insurance

Third Party Legal Liability: The basic Third Party Legal Liability limit of C$100,000 may be raised by the purchase of additional insurance coverage. Autoplan provides schemes whereby the basic limit is increased to C$200,000, C$300,000 C$500,000 and C$1,000,000. Higher limits of up to C$10,000,000 are available.

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(53) See Part VIII Regulations 1-27 of the A.I.A., S.B.C. 1973, c.6.

Own Damage: Own Damage insurance covers the cost of repairs to a damaged vehicle, or in the case of a total loss, covers the actual cash value of the vehicle and is subject to a deductible amount. With the exception of motorcycles, the deductible does not apply in situations involving theft of the entire vehicle, or where damage is caused by fire. Own Damage protection is provided by 'Collision', 'Comprehensive', 'Specified Perils' and 'All Perils' coverage.

Collision insurance covers loss or damage to the insured vehicle resulting from a collision with another object or by upset. It can be purchased only in combination with Comprehensive coverage and is made subject to various deductibles. Comprehensive insurance covers loss or damage to the insured vehicle resulting from fire, that, or any cause other than collision or upset and is also subject to a number of deductibles. Both Collision and Comprehensive insurance coverage is subject to certain exclusion. Specified Perils insurance is usually purchased to protect a vehicle against loss or damage caused by fire and/or theft. It is subject to various deductibles and coverage is provided for vehicle damage caused by, among other things, fire, theft, attempted theft, hail, wind, lightning, flood earthquake, explosion, falling parts of aircraft and rising waters.

The I.C.B.C provides specialized coverages for motorcycles, taxis, buses and vehicles of a 'fleet operation' as well as other vehicles such as unlicenced farm tractors and antique motor vehicles.

8. The Automobile Insurance Act and Tort

If an insured decides to sue another person for loss or damage sustained because of the negligence of that other person, the action must be started within two years of the accident. If the insured takes legal action against the Insurance Corporation of British Columbia for payment of a disputed claim, the suit must be commenced within one year of the accident.

Where an insured to or for whom benefits would otherwise have been payable under the provisions of Autoplan insurance is awarded a judgment for damages arising from the losses for which those benefits would have been payable, the I.C.B.C. is thereafter absolved of all liability to pay any benefits to that insured person unless the amounts included in the judgment for the losses are less than the value of those benefits awarded in the judgment.

Where a judgment is not satisfied, and where the I.C.B.C. believes that the plaintiff will thereby suffer hardship, the I.C.B.C. may pay such part of the benefits that it considers necessary to provide relief against that hardship.(54)

9. Procedure and Appeals

All accidents resulting in property damage of C$200 or more or in bodily injury or death are required to be reported to the police within 48 hours. All accidents should also be reported to an I.C.B.C. Claim Office within 24 hours or as soon as possible thereafter.

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(54) See Part VII, para.7.44 Regulations 1-27 of the A.I.A., S.B.C. 1973 c.6.

Reporting a claim in British Columbia has been made easier with the introduction of Dial-A-Claim service throughout the Province so that when a motorist has a claim, it may be reported by telephone first. If an estimate of damage is required, an appointment is then arranged for the vehicle to be brought into a Claim Office.

When an insured disputes an adjuster's assessment of liability, or the amount to be paid in a property damage claim, conciliation will be attempted by a Supervisor at the Claim Centre. If this is unsuccessful, the Manager of the Claim Centre then reviews the case. If the matter cannot be resolved at this level, the insured has the right to request a Claims Committee Review, prior to the claim being paid, or may decide to take legal action. The Committee is composed of senior officials of the I.C.B.C. who examine all aspects of the situation and thereafter convey to the insured by letter, the position of the I.C.B.C. From there the insured has recourse to the court system.

(C) RESULTS OF THE SASKATCHEWAN AND BRITISH COLUMBIA MIXED SYSTEMS

1. Saskatchewan

In 1978, the number of claims incurred increased by 1.7% over 1977 while the average cost per claim reported increased by 12.6%. Thus, despite the slight increase in reported claims, the aggregate cost of incurred claims chargeable rose by 14.5%, while premiums earned rose by 8.1%. Furthermore, investment earnings of the Automobile Accident Insurance Act account rose to C$8 million, an increase of 25.9% over 1977. As a result,, unappropriated retained earnings accumulated to the end of 1978, amounted to C$7.3 million.

The Saskatchewan Government Insurance Office promotes and engages in activities related to the promotion of road safety, and each year part of the S.G.I.O's budget is set aside for such activities.

The results of the Automobile Accident Insurance Act by Licence Year for the period April 1, 1946 to April 30, 1977 are attached (55).

2. British Columbia

The Insurance Corporation of British Columbia, since beginning operations, accumulated a deficit of approximately C$181 million and in December 1975 was instructed by the Government to revise its entire rating structure to ensure that premium income would be adequate to meet the costs of claims and administrative expenses. The result of these adjustments were rate increases averaging more than 100%, while the Government undertook to meet the Corporation's accumulated deficit.

In I.C.B.C's Fifth Annual Report (1978), the Board of Directors reported that the Autoplan Fund was in "a relatively comfortable position" as regards finance. In 1978 an C$8.6 million deficit from operations was recorded after deducting C$50 million in Safe Driving Discounts. The rate stabilization reserve, which the I.C.B.C. holds, combined with the "unappropriated surplus" was, at the end of 1978, C$59.4 million.

The Report claimed that the primary financial concern and the reason for the increased reserves for claims stemmed from the cost trends for bodily injury cases. The total number of claims of this type increased from 15,000 for the 1976 policy year to 17,400 for the 1977 policy year. Court-awarded settlements for personal injury claims greatly increased in the same period and these have forced the I.C.B.C. to reserve for the likelihood of substantially higher payments for bodily injury claims yet to be settled. For example, during the period 1974 to 1976, awards for death ranged from C45,000 to C$100,000 and averaged C$50,000 each. Currently, the courts are valuing similar cases at much higher figures and awards of C$500,000 or more are now becoming more common. The result of these trends is that the average cost per bodily injury claim increased by 47% from C$4,454 in 1976 to C$6,547 in 1977. The effect of these increases upon future premium rates is likely to be substantial. The overall average premium rates were increased by 6% for the year beginning March 1, 1978 although this increase was offset by the Safe Driving Discounts received by nine out of ten of British Columbia motorists. The Safe Driving Discount scheme involved the payment of about C$80 million in premium discounts in 1977. A further C$5 million was paid out in the 1977 policy year in the form of a cash rebate to 55,000 young British Columbia drivers who qualified for the 'Under-25 Single Male Safe Driver Incentive Grant'.

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(55) See APPENDIX C10.

Investment operations contributed to the corporate objective of keeping premiums at the lowest possible level. Total investment income of Autoplan and General Insurance increased by 17% to C$36.4 million in the 1977 fiscal year - 9% of total revenues.

The use of seat belts in British Columbia became mandatory on October 1, 1977 but the benefits related to claims for bodily injury are not yet fully identifiable. The I.C.B.C. is, however, encouraged by the results of the mandatory seat-belt use in Ontario. The Corporation is also actively collaborating with the Ministry of the Attorney-General in its Operation Counter-Attack, initiated in May 1978 and aimed at the drinking driver problem in the hope that this program will reduce motor vehicle accidents and in turn bring down the number of bodily injuries and claims in respect thereof.

(D) REFORM PROPOSALS: SASKATCHEWAN AND BRITISH COLUMBIA

1. Saskatchewan

The staff of the Saskatchewan Government Insurance Office have formulated certain proposals (56) with a view to reforming coverages provided by the A.A.I.A. The S.G.I.O. recommends substantial increases in the no-fault benefits to be paid as well as the virtual elimination of the tort suit. It is unlikely, however, that the proposals will be implemented in the near future, and in any event they will have to be studied at great length before any further action is taken for they involve a shift from a mixed system towards one of pure no-fault compensation. The S.G.I.O. proposals were submitted to a Minister's Advisory Committee on Reparations for Motor Vehicle Accidents on October 13, 1976 and were transmitted to the Minister concerned, by that Committee, on December 30, 1976.

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(56) S.G.I.O. "Reparations for Motor Vehicle Accidents" (1976).

The first part of the proposal is essentially an expansion of Part II of the A.A.I.A. There is proposed a substantial increase in the level of no-fault benefits. Further, as regards reparations for non-economic loss for permanent disability, it is proposed that the Insurer be given more latitude in his ability to assess the degree of permanent impairment than is presently the case. Such allowance is designed to cover such considerations as loss of amenity, loss of opportunity, permanent distress associated with permanent disability of 10% or more to a maximum of C$15,000. The proposal strongly emphasizes all aspects of rehabilitation and it makes provision for such rehabilitation accordingly. Such rehabilitation provisions do not exist in the present legislation.

Payment of reparations under Part II of the proposal are for three broad categories of economic deprivation, namely: (1) Reparations for lost income, or in the case of non-earners for lost opportunity to earn income; (2) Reparations for out-of-pocket expenses; and (3) Reparations for death (57).

2. British Columbia

Whereas the proposals put forward in Saskatchewan involve fundamental changes to the Saskatchewan scheme, the British Columbia scheme seems to be recovering from a difficult period of financial deficit and bad management. In British Columbia, the only changes which are being proposed and implemented are minor ones relating to the basis of assessing premiums. These reforms are not designed to change the underlying principles of the B.C. scheme, but rather are a response to calls for the Corporation to be more sensitive to individual human rights. The Government of British Columbia requested the I.C.B.C. in December 1978 to investigate means of removing those factors used in determining motor insurance rates over which an individual has no control. These factors are essentially age, sex, marital status and possibly territory.

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(57) See APPENDIX C 11.

In 1980, the I.C.B.C. introduced the 'F.A.I.R.' program, under which the assessment factors of sex and marital status were removed. In 1981, age will no longer enter into the assessment of premiums and by 1985 when the program is completed, the use of the vehicle and its value will be the main factors considered in determining premiums.

CHAPTER FIVE

CONCLUSION

CHAPTER FIVE - CONCLUSION

Everyone who enjoys a normal degree of mobility is open to the risk of sustaining personal injury or death arising from a motor vehicle accident. Accidents strike indiscriminately and the rich, the poor, the young or the old may be affected by them. A high proportion of all accidental personal injury or death arises from motor vehicle accidents and when injury is sustained it is likely to be of a serious, long-lasting or permanent nature.

The motor vehicle has provided society with inestimable benefits and a society which reaps those benefits should be prepared to take all practical steps to ensure a reasonable level of safety on the roads, and to meet its obligations towards those who suffer injury and towards the dependants of those who are killed in motor vehicle accidents.

The first chapter attempted to emphasize the importance of road safety measures in terms of their potential for preventing accidents, for reducing pain, suffering and disability, and in terms of their potential for reducing the very need for compensation. However effective road safety measures may be, they will never completely eliminate motor vehicle accidents and the resultant personal injury and death. Therefore, the need for a compensation providing mechanism cannot be eliminated entirely.

One such mechanism examined in this thesis is based on tort law. Whether the tort compensation system is capable of satisfactorily adjusting the losses associated with personal injury and death sustained in motor vehicle accidents is a question which has been the subject of extensive public debate. The last few decades have seen a definite trend away from the tort compensation system throughout the common law world, in favour of insurance schemes based to a greater or lesser degree on no-fault principles. Three such schemes were examined, namely those operating in New Zealand, Saskatchewan and British Columbia. The general trend towards no-fault schemes is founded upon a widespread dissatisfaction with the tort compensation system.

The most common criticisms of the tort compensation system are directed at the fault principle and the slow and expensive process needed to ascertain fault.

The fault principle

The main criticism of the tort compensation system is of the fault principle itself. The fact that a plaintiff's entitlement to compensation is dependent upon his ability to prove the negligence of the defendant is seen by many to be fundamentally wrong. They believe that fault investigation is a largely meaningless exercise since it is subject to much uncertainty and since the cost of compensation is, in reality, born by the whole motoring community through insurance premiums. It is argued that it would be better to spend the money presently being expended upon fault investigation on extending the scope of compensation.

The application of the fault principle

A survey conducted in England (which was not confined only to victims of motor vehicle accidents) found that only 11% of those injured accidentally, took any steps towards making a claim for tort compensation, even to the extent of discussing the possibility with someone else. (1)

The same survey found that of those interviewed who had sustained their injuries in motor vehicle accidents, only about a quarter had been successful in recovering tort compensation. Of the remainder, the majority did not make a claim in tort at all and the reasons they gave for not doing so were that they regarded the accident as their own fault or nobody's fault, that their injuries were not serious enough to warrant a claim, that they did not know how to claim or simply that they did not want to make a fuss.

A high proportion of tort claims are settled out of court in a variety of extra-judicial forums, usually in unrecorded private sessions between the claimant or his lawyer and an insurance company or adjuster. On the one hand, this is considered to be a useful and natural process of elimination which relieves the courts of the burden of having to hear each and every case. In turn, it allows the courts to spend more time and care in weighing the issues and in properly adjudicating cases which, for one reason or another, could not be settled extra-judicially. On the other hand, there is no guarantee that privately settled claims are settled fairly or that there is any uniformity in settlements of this kind.

In the Royal Commission's survey conducted in England, it was discovered that one-half of those who had reached out of court settlements considered the amount for which they had settled to be fair or at least as much as they could hope to get. Others said that they had settled because they wanted to forget about the matter, or because they were afraid of spending more money in pressing their claim or of losing the case and ending up with less than they started out with. It was further discovered that there had been some bargaining in over a third of cases in which a settlement had been reached. Some interim offers had been made and rejected before the final settlement. In this bargaining process, some plaintiffs complained of their inferior bargaining position as against professional insurance company negotiators or adjusters.

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(1) ROYAL COMMISSION ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY (U.K.) Cmnd. 7054-II, chapter 18, March 1978 (HMSO, London).

In the cases which do proceed to court, there are many practical difficulties with which a plaintiff is faced. He must show that the defendant was negligent and in doing this he must recreate the accident in court on the basis of his own evidence and the evidence of witnesses. Motor vehicle accidents by their very nature are almost instantaneous and for the most part totally unexpected. Man's memory is not his greatest attribute whereas his imagination is often boundless. The lapse of time between the accident and the trial tends to increase the unreliability of the witness' memory. Sometimes there are no witnesses to an accident or if there are, they may not wish to come forward to testify. The main difficulty in every tort action is the lack of certainty of the evidence. From a totally practical point of view, often the victim is in no position to look for witnesses himself, or as one road accident victim put it: "It's rather awkward if you're lying on the road with your leg sticking through your trousers" (2).

Tort awards compensation without regard to the degree of fault involved so that once fault is established

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(2) IBID para.991.

(and no contributory negligence is present) all is given to the injured party. It is generally immaterial whether the fault was trivial and the consequences catastrophic. Furthermore, the scale of damages is assessed according to the circumstances of the plaintiff and are often out of proportion to the degree of fault of the defendant.

The absence of the defendant's legal liability

Those who are injured as a result of a motor vehicle accident in which no legal fault can be established are denied compensation. In the English case of Snelling v. Whitehead (3) a seven-year old boy went out on his bicycle one evening without the knowledge of his parents. He was struck by a car and suffered severe brain damage. An initial award of £40,000 was set aside by the Court of Appeal on the grounds that no negligence on the part of the driver had been proved. The appeal to the House of Lords was unsuccessful.

The total absence of fault

A number of road accidents are caused without the fault of anyone. For example, if a blameless pedestrian is injured by a car which has gone out of control because its driver has died as a result of a sudden heart attack a few seconds prior to the accident, there is no legal fault on anyone's part. Since there is no question of fault, the pedestrian is unable to recover tort compensation.

Obtaining payment under tort

In England, plaintiffs who have been injured in motor vehicle accidents and who have been successful in their tort claim seldom experience difficulty in securing payment of their damage award. It will be recalled that it is a requirement of s.145 of the Road Traffic Act 1972 (U.K.) that a policy of motor insurance must, at a minimum, indemnify the insured in respect of any liability which may be incurred by him for death or bodily injury. In North America it is common to find that insurance is required to be carried in respect of certain minimum prescribed amounts, and in view of the high awards of damages which are being awarded by the courts today, these prescribed minimum amounts are totally inadequate. Thus, although a defendant may have satisfied the requirements of the law by carrying the minumum prescribed insurance, he may not be able to satify damages awarded against him. It is submitted that insurance coverage in respect of liability for personal injury or death should be required to be unlimited as is the case in England.

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(3) "The Times" July 31, 1975.

Lump sum compensation

A serious shortcoming of the tort system is with the form in which damages for future pecuniary loss are paid out. In assessing the size of the lump sum award, the court is required to consider various uncertain factors which may arise in the future and to make an educated guess as to what the likely circumstances and position of the plaintiff might be for many years to come. In these times times of economic instability and high inflation, the court is faced with an impossible task.

The delays of tort

Tort claims take time to settle. British Insurance Association figures indicate that about 9% of tort claims (by number) in respect of fatal motor accident injury and approximately 17% for non-fatal injury are disposed of within six months of the accident; about one half are disposed of within one year and about 85% within two years. Included within the remaining 15% is a high proportion of claims which are eventually settled for a large sum. (4)

Complaints against the delays of lawyers and the tort system are rife. It is sometimes in the best interests of the plaintiff for his case not to be settled before his medical condition has sufficiently stabilized to allow for an accurate prognosis to be made. In the words of individual victims who settled their claims prematurely: "At the time I didn't know how much I was going to suffer. They should make provision for later in life. At that particular moment the money seemed enough but who knows if I'll be handicapped all my life" (5). Another victim said: "I signed the papers before I was personally fit to sign them. Otherwise I would have claimed for the loss of my legs as well, but I signed the papers before my legs were amputated and I can't make another claim" (6).

Not all delay is justified or desirable. Delay means that plaintiffs have to wait long periods for their compensation in tort. It is possible that such a period without adequate finance can be a hindrance to the speedy recovery of the plaintiff. Plaintiffs are also known to suffer from 'compensation neurosis'; associated with this condition are various symptoms ranging from genuine anxiety to an attempt by the plaintiff to magnify and prolong his loss until a settlement is reached.

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(4) ROYAL COMMISSION ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY (U.K.) Cmnd. 7054-I, para. 992, March 1978 (HMSO, London).

(5) IBID paragraphs 261 and 993.

(6) IBID, Volume Two, para.409(viii).

Cost of the tort system

It has been estimated that the administration costs of the tort compensation system for road injuries (as for other injuries) represent about 85% of the value of tort compensation payments, or approximately 45% of the combined total of compensation and operating costs (7). These figures are high because of the fault investigation process which is part of every tort action. Many argue that the funds would be better used to extend compensation.

The advantages of the tort system

The main advantages of the tort system is that it is based on individual responsibility and elementary justice in that he who by his fault injures his neighbour is required to make reparation.

It is occasionally argued that the prospect of an action in tort and of liability in tort deters unsafe conduct. In reality, however, the financial loss which befalls an insured defendant who is called upon to pay damages is minimal. It commonly amounts to a small increase in his insurance premium, while the financial burden is borne by the insurer. It has been written that:

> "Its mythology notwithstanding, the fault insurance system is inherently incapable of deterring unsafe driving. Individual last minute driver mistakes - undeterred by fear of death, injury, imprisonment, fine and loss of licence - surely cannot be deterred by fear of civil liability against which one is insured" (8).

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(7) *IBID*, paragraph 409(ix).

(8) Report of the NEW YORK INSURANCE DEPARTMENT to Governor Rockerfeller (1970)- "Insurance - for Whose Benefit ?", p.12.

Dissatisfaction with the tort compensation system

Approximately 30% of those who had consulted a solicitor about claiming for personal injury in 1973 in England were satisfied with the service they received; approximately 50% were not, and the rest declined to comment. TABLE V below shows some of the common reasons for dissatisfaction which were given.

TABLE V

REASONS FOR DISSATISFACTION WITH THE LEGAL SYSTEM

Great Britain: Injuries in 1973

Number not altogether satisfied	120
Reason for dissatisfaction	Percentages
Too expensive	13
Takes too long	34
Legal advisers do not give good service	21
Difficulties of pursuing claim	19
The system is not adequate to the individual case	14
The system is hard to understand	23
Other reasons	6
Total	130[1]

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[1] In some cases more than one reason was given.

(Source: REPORT OF THE ROYAL COMMISSION ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY (U.K.) Cmnd. 7054-II, page 126)

It is apparent that unfamiliarity with the law and lack of confidence in lawyers is widespread. Of the tort system in general, one victim has said: "The whole process is diabolical. I don't see why you should have to fight so hard, especially when you are the innocent party. It's disgusting and degrading to have to be examined by the other side" (9).

In summary, the tort compensation system has been shown to be deficient in many aspects: the need to prove fault seems to be a wasteful effort which in addition makes the outcome of a tort claim uncertain. Tort has been shown to be a complex system which many are afraid of using, and those that do embark upon a tort claim find that it is a long, slow and costly process.

It is suggested that perhaps the best available alternative to the tort compensation system is the mixed system. The pure 'no-fault' system is an extreme reaction to the deficiencies in tort, although a system based purely on no-fault principles may well be suitable in New Zealand because of the well established welfare state in that country with which New Zealand's motor insurance scheme is fully compatible. The main disadvantage with the pure no-fault system is that a plaintiff is deprived of his common law rights and is left at the mercy of a large government agency, which for the most part operates on the basis of standard formulae which have been laid down in the legislation. The pure no-fault system, at least in this respect, appears to be inflexible.

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(9) ROYAL COMMISSION ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY (U.K.) Cmnd. 7054-II, para. 411 (xvi) March 1978 (HMSO, London).

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MOTOR ACCIDENT INSURANCE AND SYSTEMS OF COMPENSATION

by

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The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research for acceptance, a thesis entitled MOTOR ACCIDENT INSURANCE AND SYSTEMS OF COMPENSATION submitted by ANDREW K. MACIAG in partial fulfilment of the requirements for the degree of Master in Laws.

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TO MY PARENTS

ABSTRACT

The economic cost of compensating loss of human life and personal injury arising from a motor vehicle accident can be astronomical and in many cases it is far in excess of the resources of an individual motorist. There therefore arises an immediate need for some form of motor insurance if victims of motor accidents are to be adequately compensated in respect of the losses which they suffer.

The insurance mechanism is a social device which makes it possible for a motorist to substitute a small definite cost for a large but uncertain loss by paying a premium to an insurer in return for which the insurer agrees to assume the potential risk of financial loss arising from the insured's use of a motor vehicle. The basis of insurance is that the contributions of the many pay for the losses of the few.

There can be no doubt that motor insurance in one form or another is essential. Controversy arises, however, over what form motor insurance should take. The oldest method of obtaining compensation is through the tort system and the question is whether the long-standing alliance between tort and motor insurance is capable of satisfactorily adjusting the losses which arise from motor vehicle accidents.

In the last few decades, the tort system has been either wholly or partly abolished in many common law jurisdictions. It has been replaced by insurance schemes based to a lesser or greater degree on no-fault principles. Tort and no-fault have different aims. Whereas the tort system

is based on a principle of elementary justice in that he who by his fault injures his neighbour should make reparation, no-fault systems seek to compensate victims for their losses, without regard to fault. Such a system abolishes the criteria employed by tort law in ascertaining liability and to a greater or lesser extent discards the concept of individual responsibility. The question is whether it is in the public interest to extend into the field of motor insurance a concept which discards fault and individual responsibility in providing compensation.

The ultimate aim of any system of insurance and compensation is to provide insurance economically against the risks involved in the use of a motor vehicle and to pay adequate compensation on an equitable basis promptly when accidental injury or death occurs. There has been much public debate as to which system fulfills these objectives best, and the debate will no doubt continue as society strives in search of the best system.

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INTRODUCTION

This thesis will be devoted to a study of various systems of motor insurance and compensation.

Chapter one emphasizes the potential for preventing accidents, reducing pain, suffering and disability through effective road safety measures. This in turn leads to a reduction in the very need for compensation itself.

Chapter two examines the tort compensation system as it operates in England. Chapter three examines New Zealand's system which is based entirely on no-fault principles. The fourth chapter examines the Saskatchewan and British Columbia motor insurance schemes which are based on a mixture of tort law and no-fault principles, and the conclusion is to be found in chapter five.

Few would deny that some form of motor insurance which provides compensation to victims of motor vehicle acccidents is an essential feature in every modern society. The issues which are more commonly the cause of disagreement are over the form that it should take, who should operate it, who should be covered and in what circumstances and finally, what type of benefits it should provide and in what amounts these should be payable. In analysing the various systems, these issues are examined in some detail.

CHAPTER ONE

MOTOR TRANSPORT,
INJURY AND DEATH,
AND ROAD SAFETY

CHAPTER ONE: MOTOR TRANSPORT, INJURY AND DEATH, AND ROAD SAFETY.

This chapter briefly examines the historical development of motor transport and its importance to society today. It samples statistical data relating to personal injury or death sustained as a result of the use of a motor vehicle and examines practical ways in which both the number of accidents as well as the severity of injury arising from them can be reduced. Such a reduction in turn leads to a reduction in the need for compensation itself, and prevention must be a better remedy than cure especially where the cure is such an imperfect one: monetary compensation can never restore a victim of permanent injury to his pre-accident level of health and mobility, nor can it bring a dead man back to life.

(A) MOTOR TRANSPORT

1. The advent of motor transport

By the 1830's, the manufacture and use of steam road carriages had attained the status of a minor industry in England. Steam-propelled vehicles were, however, noisy, smoky and caused much damage to roads. Hostility towards them was rife and it was common for drivers to find roadways blocked with heaps of stones or felled trees. By 1840, it had become obvious that steam carriages had little future: the anti-machinery attitude of the public and the enmity of the horse-carriage interests coupled with competition from the railways were all growing. Steam carriages were being charged £2 for passing a turnpike tollgate while a horse carriage paid only three shillings, and very soon steam carriages became subject to the very strictest legislation.

The Locomotives Act of 1865 reduced the permissible speeds on public roads to 2 m.p.h. within cities and 4 m.p.h. in rural areas. This Act also required that every steam carriage must have a crew of three, one to precede it by not less than 60 yards carrying a red flag.

By the time the first motor car appeared in England in 1894, it was still necessary to have the vehicle preceded by a person on foot, warning pedestrians ahead (although he was no longer required to carry a flag after an 1878 amendment was passed to the 1865 Act). The motor vehicle was to receive a no more favourable welcome than did its predecessor, the steam-propelled vehicle. The liberation of the motor car, which is still celebrated each November in England by the London to Brighton run by veteran cars, is traditionally regarded to have occurred with the passing of the Locomotives on Highways Act 1896, which relaxed earlier restrictions. The motoring public, however, was to have immense difficulty in attaining full recognition as persons lawfully using the highways: the fight for such a recognition was about to begin. The 1896 Act passed through Parliament with relatively little difficulty in comparison to subsequent motoring legislation. By this time, motoring interests were well represented by motoring organizations and in 1897, the Self-propelled Traffic Association and the Motor Car Club merged to form the Royal Automobile Club of Great Britain. Opposition to the use of motor vehicles was at the same time becoming increasingly vociferous: in London, 'The Times' frequently published letters to the editor which complained about the "motoring pest". In 1900, the paper published a leader, which said that "it is a fact that in some parts of the country the motor car is an object of hatred...It is not surprising, because there are a number of drivers who are a curse to the neighbourhood in which they drive... drivers who seem, when they mount their cars, to put from them altogether the instincts of gentlemen" (1). In his letter, which was published in 'The Times' in 1902, a Mr. C. G. Edwards, J.P. claimed that readers would be shocked if they could have overheard the comments at a farmers' hunt luncheon he had attended recently, after the guests had been passed on their way to the venue by one of these "cads on castors, upsetting their horses and insulting them as he went by" (2). In other letters to 'The Times', published in 1902, correspondents wrote of the motoring public: "their manners are so bad that justices should have a free hand with them" and that: "it is common sense that it is to the public danger to travel on a public highway faster than 12 m.p.h. "(3). The vehicles themselves appear to have caused irritation for another correspondent complained of "the excessive splendour of the car at night with four acetylene lamps giving out enough light to illuminate St. Paul's (Cathedral) .... "(4).

The motoring organizations persisted in their efforts to obtain law reforms which would favour their members. The opposing factions persisted with equal vigour in their castigation of the motoring public. During Parliamentary debate in 1903, motor vehicles were referred to as "stinking engines of iniquity from which harmless men, women and children had to fly for their lives at the bidding of one of these slaughterers." The allegation (which was to become a common one) was made that the motor car was the luxury of the few, and that the time had come when the rich ought to be pulled up from using the roads for sport and endangering the public (5). Such opinions were reflected in

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(1) "The Times" December 15, 1900.

(2) "The Times" September 27, 1902.

(3) "The Times" September 25, 1902.

(4) "The Times" October 9, 1902.

(5) T.C. WILLETT: "Criminal on the Road" (1964) pp. 68-69.

'The Times', which published an article in which automobilists were described as being "supplied in the majority of instances mostly from a class that possesses money in excess of brains or culture" (6).

The motoring organizations appeared to have won the day when the Motor Car Bill of 1903 was introduced into the House of Commons. The principal authors of the Bill were officials of the motoring organizations and the then Prime Minister, A. J. Balfour gave his support to it. It proposed making it an offence "to drive a motor car recklessly, negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the highway, and to the amount of traffic which actually is at the time, or which might reasonably be expected to be, on the highway". The anti-motorist faction's main argument against such a proposal was that the speed limits provide a cut-and-dried rule and whether or not they are exceeded would be a matter of fact, whereas the proposed clause which dealt with dangerous driving was useless, since its interpretation rested exclusively on opinion. Threats were made that unless limits were imposed, the irate public might attempt to eliminate 'the pest' by taking the law into their own hands and in particular by throwing bottles, putting nails on the road, and shooting at the rear wheels of cars (7). Finally, Parliament decided to implement a 20 m.p.h. speed limit, with a provision which allowed local authorities to impose lower speed limits, but only with ministerial approval. The Motor Car Act 1903, therefore, contained a clause dealing with both speed limits and with dangerous driving. Other provisions of the Act made it an offence to fail to stop after, or to report an accident and the courts were empowered to endorse and to suspend driving licences.

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(6) "The Times" August 1, 1903.

(7) T.C. WILLETT: "Criminal on the Road" (1946) p. 70.

The 1903, Act, with a number of continuation Acts, remained in force until 1930 (8). In the meantime, the First World War saw a great increase in the use of motor transport and motoring was introduced to thousands. After the War, mass production and the greater availability of credit resulted in an enormous growth in the use of motorized transport. Henry Ford, Carl Benz, Gottlieb Daimler, Ransom E. Olds and others have gone down in history for their contributions towards developing, improving and popularizing the internal combustion engine, even though the contemporary societies in which they lived must, at times, have regarded each of them as eccentric lunatics who were at the very source of the new "evil".

In the inter-war period in England, motoring organizations considered the 20 m.p.h. speed limit to be unrealistic and the 1903 Act was generally ignored. Anti-motorist factions accused the motoring public of contempt for the law. In 1928, Lords Cecil and Buckmaster introduced a Bill into the House of Lords which was aimed at "securing the comfort of pedestrians: the motorist should get out of their way, and not the reverse" (9). By this time, the Government was awaiting the Report and recommendations of a Royal Commission on Transport which had been established "to consider the problems arising from the growth of road traffic" and to recommend what measures, if any, should be adopted to secure "the employment of the available means of transport to the greatest public advantage". The Bill to secure the comfort of pedestrians which had been introduced in the House of Lords was shelved by the government, pending the Royal Commission's Report which was to give it some consideration. As it turned out, the Bill was shelved permanently. The Commission reported in 1929 and its report and recommendations formed the basis of the Road Traffic Act 1930. This sensible and far-sighted Act was to form the basic structure around which modern traffic laws in England have developed. The 20 m.p.h. speed limit was abolished for cars and cycles; public service vehicles were, however, restricted to a speed limit of 30 m.p.h. Third Party liability insurance coverage and some tests for driving licences were made compulsory.

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(8) See T.C. WILLETT: "Criminal on the Road" (1964) pp. 70-72 for a summary of developments between 1903-1930.

(9) HANSARD, House of Lords, December 12, 1928.

Until the post-Second World War years, owning a car was still something of a luxury. Since then, however, it is becoming the exception rather than the rule for a family not to possess some form of motorized transportation. In addition to the use of private motor vehicles, there has been a large growth in commercial motoring and road transport.

2. Present-day motor transport

(a) England

Major improvements to Britain's inland transport system in recent years have involved an extension of the motorway (freeway) system. Work on the Government's program to improve Britain's truck road network has been in progress since the mid-1950s and has included the construction of approximately 1,500 miles of motorway. An increasing proportion of passenger and freight traffic is carried by road and private ownership of cars has been growing for many years. The car is now the most popular form of travel, and car traffic in England, Wales and Scotland has risen by more than 50% in the last decade. The number of motor vehicles in England, Wales, Scotland and Northern Ireland has increased by 22% since 1968, this being mainly attributable to the increase in the number of private cars. Of the 18.1 million vehicles licensed for use on the roads in June 1978, 14.3 million were motor cars (approximately 260 for every thousand of the population), 1.7 million were road goods vehicles, 1.2 million were motor cycles, scooters and mopeds and 114,000 were public transport vehicles.

Road haulage has a dominant position in the movement of freight, acccounting for 83% of tonnage lifted in Great Britain in 1977 and for some two-thirds of tonne-kilometres. Motor vehicle traffic in Great Britain rose in 1977 by 1.8% to a record 259,382 million vehicle-kilometres, of which cars and taxis accounted for 80%.

Central government is responsible for the administration of trunk motorways and other trunk roads and pays for the cost of their construction, improvement and maintenance. The highway authority for non-trunk roads in England and Wales is, in general, the county council in whose area the roads lie (10).

(b) Canada

In the past twenty years the total of surfaced road in Canada has more than doubled, to over 300,000 miles; paved highway mileage has quadrupled to more than 65,000 miles; including non-surfaced roads, Canada has nearly 450,000 miles of highways. Cars are owned by three out of four families and inter-city buses move more than 50 million passengers a year. There are 1.4 million trucks and road tractors licensed in Canada, of which 70,000 are trucks operated for hire. Highways are under provincial jurisdiction.

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(10) See "Inland Transport in Britain" 1979 and "Road Accidents Great Britain" 1977: (HMSO, London).

On a population basis, Canada has a more extensive road system than any other country in the world except Australia. The populated sections of the country are well supplied with roads and freeways, but vast areas of the larger provinces and the territories, which are sparsely settled, are virtually without roads of any kind. About 4% of road budgets are spent on administration, 60% on construction and modernization, 36% on maintenance (mostly for snow-clearing, sanding and the repair of frost damage). About C$2 billion is spent annually by federal, provincial and municipal governments on roads and highways, compared with C$1 billion in 1962. Federal spending is about C$190 million, municipal C$370 million and provincial C$1,200 million.

Canada has the longest paved road in the world. When the shared-cost project was approved by the Canadian House of Commons in 1949, it was estimated that the provinces and Ottawa would each spend C$150,000 and that the Trans-Canada Highway, which is 4,891 miles long, would be completed by 1956. The total cost up to March 1970 was C$1,192,132,706 and work was still in progress.

Over 7,700,000 Canadians hold drivers' licences. The ten provinces collect about C$300 million a year in vehicle registration and drivers' fees and C$950 million in gasoline taxes. A federal sales tax of 12% collected from the manufacturers of all new vehicles amounts to about C$100 million a year.

(c) United States

The United States is etched by 3,700,000 miles of roads and streets and a pervasive road transportation network has helped to bring together the vast geographic expanse of the country, and has helped to bring about and to maintain a homogeneous and closely-knit social and economic environment. Americans are extraordinarily mobile and this mobility is reflected in the nation's economic and social life. Mobility has made possible vast metropolises, spreading suburbs, a lengthening radius of commuter travel and the dispersal of shops and industry, all of which are common features of American cities. Mobility has also had destructive effects for it has accelerated the decay of the old urban areas, it has caused a multiplication of traffic congestion, it has intensified the pollution of the environment, it has undermined the public-transportation systems and it has made recluses of those who do not have cars.

The network of roads is thickest on the eastern seaboard, along the Mississipi and Ohio valleys and on the Pacific coast. In 1971 there were 111,000,000 motor vehicles registered in the United States consisting of 92,000,000 passenger cars and 19,000,000 trucks and buses. Today, 83% of all families own at least one car, and 28% own two or more. It is possible to eat a meal, see a movie, or make a bank deposit without ever getting out of the car, and motels and shopping centres are tailored to the needs of a wheeled clientele. Public transport is generally limited and a car is no longer considered a luxury in the United States.

TABLE 1

MOTOR VEHICLES REGISTERED IN THE UNITED STATES

(in 000,000 vehicles)

year	total motor vehicles	passenger cars
1940	32	27
1950	49	40
1960	74	62
1970	108	89

(Source: Automobile Manufacturers' Association: "Automobile Facts and Figures").

The purposes of car usage were revealed in a survey of the Baltimore metropolitan area in the early 1960s. (11). It showed that 38% of all trips were made for the purpose of getting to work, and that 9% were for personal business. Shopping accounted for 16% of the total trips and social or recreational travel for an equal proportion. Another 10% of usage was for travel to school.

While seven out of ten trips in metropolitan areas are made by car, public transport does exist and plays an important role in the most populous U.S. cities. From 70 to 90% of home-to-work travel in rush hours is by public carrier in such large urban centres as Boston, Philadelphia, Chicago, and New York and on an average day, 26,000,000 people in the United States make use of local bus and subway services. Only 15% of U.S. workers walk to their jobs.

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(11) WILBUR SMITH AND ASSOCIATES: "Baltimore Metropolitan Area Transportation Study" (1964).

The car also dominates inter-city travel patterns. According to a U.S. Census Bureau survey carried out in 1967, of those making trips of 100 miles or more, 86% go by car. Of the remainder, 3% go by bus, 8% by air and only 1% by rail. When inter-city travel by public carrier is measured in terms of passenger miles, however, the figure for air travel is three times the total of rail and bus transportation combined because trips by air are normally much longer than those made by bus or rail.

Household budgets reflect the wide use of travel facilities and the mobility of American families. Out of every consumer dollar spent on travel in 1968, 93¢ went towards the purchase of cars and their upkeep. The remaining 7¢ was spent on public carriers, divided almost equally between intercity transportation and carriers serving suburban areas. These statistics show that only 3.2% out of the transportation dollar was spent on non-automobile transportation in the cities. Since nearly one-third of this amount can be accounted for in taxi fares, the urban public transporation system, including commuter railroads, received only 2.2¢ of the transportation dollar.

(d) New Zealand

Despite the rugged nature of the country, most of the inhabited areas of New Zealand are readily accessible. The road system is good even in rural areas and modern dual carriageway roads constructed to freeway and expressway standards have been built on the approaches to the main metropolitan centres. Urban traffic volumes increased so rapidly after 1950 in New Zealand as to cause grave problems of congestion and the new road systems have, to some extent, alleviated the difficulties.

The number of motor vehicles in New Zealand is now the equivalent of one to every 2.5 persons, or one private car to every 3.6 persons - higher ratios than in any country outside North America.

Commercial road services for passengers and freight cover the North and South Islands.

As can be seen from the above statistics and analysis, the quest for personal mobility has been answered by the internal combustion engine and there can be no doubt that the popularization of motor vehicle transportation has provided society with inestimable benefits. Aside from pollution by fumes and noise, motor vehicle transportation has, however, created a new and serious social problem, namely that of road accidents and the personal injury and death which arises from them.

In its quest for personal mobility, society is prepared to tolerate a certain level of personal injury and death arising from the use of motor vehicles on the road. The remaining parts of this chapter will firstly sample statistical data relating to such personal injury and death, and secondly, examine if there are any practicable road safety measures which can be implemented in order to reduce both the number of accidents and the seriousness of injury when it is sustained.

(B) ROAD ACCIDENT INJURY AND DEATH

Just as it would be unthinkable to those who invented the internal combustion engine about one hundred years ago or to those English Parliamentarians who, through the strictest legislation attempted to control the use of motorized vehicles, that motor transportation would revolutionize and moblize society on the scale that it has, so it would be unthinkable to them to find that our society tolerates the level of road accident injury and death that we do (12).

1. England

Well over a quarter of a million people have been killed on the roads of Britain since the turn of the century. Each year approximately 6,500 people are killed and about 350,000 injured on Britain's roads, of which 80,000 are seriously injured. In 1977, for example, 6,614 people died on the roads in Britain, about 81,700 were seriously injured and 259,800 were slightly injured. These figures represented an overall casualty increase of 2 1/2% over 1976. Over the same period, motor traffic increased by over 3%. The total number of casualties in 1977 was 13% below the peak year of 1965 and yet in the same period motor traffic increased by 60%. During 1977, the proportion of deaths, in all road casualties decreased slightly over 1976. The number of deaths, however, increased by 1%, while seriously injured casualties increased by 3% and slightly injured casualties increased by 2%. The number of pedestrian casualties in 1977 was 71,276, which represented an increase of 4% over 1976, the first time pedestrian casualties had increased since 1972. Adult pedestrian casualties increased by 3%, while child pedestrian casualties increased by 5%. Notwithstanding this, in 1977 child pedestrian casualties were still more than 20% below their 1972 level (13). In 1977, car user casualties increased by 2%. Casualties amongst users of two-wheeled motor vehicles increased by 6% while their distances travelled increased by 10%. Pedal cyclist casualties increased by 1% while their distances travelled remained about the same (14).

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(12) see APPENDIX A1: INTERNATIONAL COMPARISON OF ROAD DEATHS AND DEATH RATES: 1976.

(13) see APPENDIX A2: PEDESTRIANS KILLED OR SERIOUSLY INJURED PER 100,000 POPULATION.

Each year, the Department of Transport produces estimates of the cost of road accidents and in 1977, the total cost of road accidents was estimated to be £1,293 million. Apart from the strictly material losses, this figure includes a notional (and minimum) allowance for the cost in human terms of the pain and suffering associated with death and injury.

2. Canada

In Canada, approximately 5,500 people die in motor vehicle accidents each year. In 1976, Transport Canada estimated that of the 1975 population of Canada, 10.1% (2,260,000) would be killed or injured in a motor vehicle accident in the ten-year period of 1976-1986 and that for the forty-five year period of 1976-2016, this figure would be 34% of the 1975 population (15).

In Alberta in 1979, 692 people died in motor vehicle accidents compared with only 502 in 1978. The figures for 1977 were 576 and for 1976, 516.

With 692 deaths in 1979, Alberta now has a rate of 34.4 traffic fatalities for every 100,000 people, which is well above the Canadian average of 24.6 and is surpassed only by New Brunswick which has a rate of 37.1 deaths per

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(14) see APPENDIX A3: FATAL AND SERIOUS CASUALTIES BY CLASS OF ROAD USER, 1967-1977.

(15) TRANSPORT CANADA: "The Human Collision" TP 454 1976, p. 17.

100,000 persons. Saskatchewan is in third place with a rate of 30.2. In 1978, Alberta was in fifth place in death per 100,000 populations (16).

In 1979, 79,146 vehicle accidents involving personal injury or property damage of more than C$350 were recorded in Alberta, compared with 71,771 in 1978. There were 194,131 people involved in accidents in 1979: this figure represents about 10% of the province's population.

3. United States

In the United States each year, about 45,000 people die in motor vehicle accidents. Each state produces detailed statistical data (17).

(C) ROAD SAFETY

Although the number of road accidents and casualties is high, considering the major role which motor vehicle transportation plays in society today, roads are reasonably safe and motor transportation is a relatively safe mode of transportation. The risk of injury or death arising from the use of motor vehicles on the road cannot be eliminated entirely for that would entail the abolition of motor vehicle transportation, but through various practicable road safety measures that risk can be managed and reduced (18), and a decrease in the number of road casualties leads to a decrease in the very need for compensation itself.

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(16) for suggested reasons why traffic fatalities have risen sharply in Alberta in 1979: see p. 27 post.

(17) see APPENDIX A4: MICHIGAN TRAFFIC TRENDS 1968-1977;
APPENDIX A5: FLORIDA TRAFFIC STATISTICS 1958-1977;
APPENDIX A6: FLORIDA TRAFFIC TRENDS (VEHICLE TRAVEL AND DEATHS);
APPENDIX A7: FLORIDA-AGE DISTRIBUTION OF DRIVERS INVOLVED IN TRAFFIC ACCIDENTS.

It can only be hoped that compensation, as a cure, will help to alleviate some of the ill-effects and hardships which follow road injury or death: it rarely restores an injured person to his pre-accident level of physical and/or mental ability, especially where serious injury is involved, and it certainly cannot bring a man back to life. Considering that road injuries are more likely than other accidental injuries to be severe or fatal (19), that they generate a great deal of physical and mental pain and economic hardship, and that road accidents are a burden on society's resources (20), it is obvious that prevention is a more desirable remedy than cure. Indeed, accident prevention and road safety are often considered to be all integral part and concern of state administered accident compensation schemes (21).

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(18) Royal Commission on Civil Liability and Compensation for Personal Injury, March 1978, Cmnd. 7054-I para. 961 (HMSO, London).

(19) IBID para. 960.

(20) Road Accidents in Great Britain 1977, (HMSO, London). In Great Britain, the total cost of road accidents in 1977 was estimated by the Department of Transport to be £1,293 million.

Road accidents are invariably caused by a number of factors, and the study of accident causation is the first step in formulating effective road safety measures. It involves an analysis of statistical data collated from past accidents with an aim of identifying the variables which commonly cause or contribute towards accidents. Once these have been identified, an effort can be made to eliminate, or at the very least, control them through appropriate safety measures.

The factors causing or contributing towards road accidents can be classified into the following three broad categories:

(a) the design, construction and maintenance of roads;

(b) the design, construction and maintenance of motor vehicles;

(c) the behaviour of road users.

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(21) In New Zealand, under s. 45 of the Accident Compensation Act, 1972, the Accident Compensation Commission is required to and has established its safety division. The Division concerns itself with safety management techniques, accident investigation and much emphasis is placed on costing of road accidents so that future management decisions in relation to safety may be made on a cost effective basis.

In 1978/9, the Commission made grants totalling NZ$340,917 to a variety of preventative activities including, among others, to the Defensive Driving Council, the Safe Driving Award Scheme and the Road Traffic Research Council.

Research into accident causation has revealed that accidents can generally be prevented more easily by improved road engineering and improved vehicle design than by punishing or exhorting bad drivers to drive with greater care (22).

(1) The design, construction and maintenance of roads. (23)

Research into all aspects of road design, construction and maintenance is carried out daily in an effort to provide the technical and scientific knowledge which is required in the construction of modern roads (24). Research reveals that certain types of roads are more conducive to safe driving than others. It is a well recognized fact that modern roads, designed and constructed for present-day traffic, produce a marked decrease in road consideration. Road widths and curvatures, road markings casualties (25). Road surface (26) is an important consideration. Road widths and curvatures, road markings (27),

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(22) see LEEMING: "Road Accidents: Prevent or Punish?" London 1969.

(23) see generally M. AUSTIN: "Accident Black Spot" ch. 4 (Hamondsworth 1966).

(24) In England, for example, research into all aspects of road construction, traffic engineering and safety and into problems associated with transport, is carried out by the Transport and Road Research Laboratory (TRRL), a government agency.

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(25) see M. AUSTIN: "Accident Black Spot" pp. 134-136.

(26) Research on Road Safety 1963, pp. 3-4 (HMSO, London): In the early 1960s in England, a survey was made of 55 skidding accident sites with an average length of a quarter of a mile before and after the sites were treated with a non-skid surface, and the results were as follows:

	Before	After
Total no. of accidents at the 55 sites	723	130
Average no. of accidents per year, per site	6	1

(27) The use of white reflective lines painted along the edges of main roads ("edgelining") is a safety measure which is used widely in North America. Some European countries such as Sweden are now adopting this practice. Edgelining has been shown to make it easier for a driver to judge his position on the road, especially where there is reduced visibility. It is perhaps most valuable at night to a driver who is dazzled by the lights of oncoming traffic: studies in the United States have shown that opposing traffic streams at night, pass has edgelines. This reduces the risk of head-on collisions and side grazes. See further M. AUSTIN: "Accident Black Spot" p. 131.

and road lighting (28) also play an important role in creating a safer road environment. There are numerous other road features in use which are primarily designed to provide safer road conditions, but for the purpose of this study, a few examples will suffice.

Speed limits are an obvious safety measure. The recent installation of a computer-controlled signalling system on Britain's motorways is another example. The system aids in giving motorists advanced warning of dangers ahead, of advisory speed limits and of lane closures. In urban areas, the provision of designated pedestrian crossings, identified by special road markings, their adequate illumination at night and the use of pedestrian/

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(28) Improved street lighting invariably results in a reduction in the number of night-time accidents. In England, the Road Research Laboratory conducted some research in this area and published the results in "Traffic Engineering and Control" (Dec. 1961). The frequency of accidents was examined on 64 lengths of road before and after the introduction of better street lighting, and it was concluded that (i) good modern street lighting reduced the average frequency of injury accidents in darkness by 30%; (ii) there was strong evidence that the reduction in pedestrian accidents was greater than the reduction in other types of accident; (ii) there were no significant differences between the accident reductions from fluorescent, mercury and sodium lighting; (iv) the total savings in accidents costs on the 64 lengths were more than sufficient to pay for the increase in the capital and running costs of the improved lighting installation. See further M. AUSTIN: "Accident Black Spot" p. 134.

traffic signal lights afford other examples. Recent road designs have segregated pedestrians from vehicles by the use of pedestrian precincts (29). These, together with designs which segregate cyclists from vehicular traffic by providing special 'cycling lanes', will inevitably reduce the risk of injury or death inflicted upon pedestrians and cyclists by motorists.

(2) The design, construction and maintenance of motor vehicles.

In all jurisdictions in which motor vehicles are in common use, there exists legislation and regulations which are designed to control their design, construction and maintenance.

At the design and construction stage, the manufacturer is required to conform to specified minimum standards. Research is carried out in an attempt to provide the necessary technical and scientific information required in constructing safer vehicles.

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(29) for example: the Stroget, a sequence of five streets in the medieval heart of Copenhagen. There are traffic-free zones in Amersterdam, Rotterdam and The Hague. A number of English cities have similar arrangements. German cities - Munich, Cologne, Dusseldorf, Essen, Stuttgart and ninety others - now have pedestrian precincts. In Munich, the country's most pedestrianized city, the traffic-free zone covers the whole shopping and entertainment area. Pedestrian malls are springing up in major Canadian cities, for example, Ottawa's Spring Street Mall, Calgary's Eighth Avenue Mall, Victoria's Bastion Square, Toronto's Yonge Street Mall and Barrington Street in Halifax.

The design and location of mirrors, indicators and lights, the width of windscreen pillars, the effectiveness of windscreen wipers and demisters and the design of suspension, brakes and tyres are all under constant review.

The elimination of sharp edges and features on the body of the vehicle which could very easily cause injury even at low speeds is considered to be important. The strengthening of the shell of the vehicle affords greater protection to its passengers: the Swedish manufacturer of Volvo cars points out that the roomy passenger compartment of the Volvo 240 sedan is surrounded by six steel pillars, each one strong enough to support the weight of the entire car.

Special shock absorbing bumpers, collapsable dash boards and front and rear 'crumple zones' are all designed to absorb the impact of a collision, thereby affording passengers some degree of protection. Safety belts are now in common use and their use is compulsory in many jurisdictions.

The maintenance of the mechanical condition of vehicles is usually controlled by regulations. In Great Britain, private cars and light vans which are three or more years old must be tested annually for their mechanical good order. Heavy goods vehicles are tested annually at government test stations, and public service vehicles must be specially approved before being licensed to carry passengers and are tested at regular intervals.

(3) The behaviour of road users (30)

Almost every road accident is caused by some degree of human fallibility and yet, of all the causes of, or factors which contribute toward road accidents, injury and death, human behaviour is the most difficult to control.

Certain conduct on the road is outlawed or controlled by criminal or quasi-criminal law, which serves as a deterrent by providing a penalty for its infraction. The key to improving the standard of human behaviour on the road in fact, lies in more positive and constructive action such as the use of public information programs. Through these, road users can be informed of the requirements of road traffic laws and regulations; they can be persuaded and educated to abide by the law and to exercise extra care and consideration for other road users in specific road situations, in which accidents are known to occur frequently. Finally, an attempt to change driving attitudes may be made through information programs.

Over the years, various attempts have been made to persuade, educate and exhort motorists and other road users to exercise more care in their use of the roads. Since the worst drivers are usually those who have the greatest confidence in their own driving ability and who are least amenable to criticisms (31), general slogans aimed at changing their attitude, such as 'be a better driver' or 'drive carefully' are likely to have very little effect. There are indications, however, that public information programs aimed at providing information on various aspects of safety which are not entirely common knowledge, such as how to avoid and correct skids and public information programs which are aimed at persuading people to adopt or to refrain from adopting certain definite modes of conduct, are both useful and effective. Examples of conduct which is encouraged includes the dipping of headlights at night, the use of direction signals before turning, extra care in crossing road junctions and the wearing of seat belts. An obvious example of conduct which is discouraged is drinking and driving.

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(30) see generally M. AUSTIN: "Accident Black Spot" ch.7.

(31) IBID: p. 189: "even the involvement in several accidents often fails to shake this confidence, the fault being attributed to the other fellow or bad luck. A survey by the Opinion Research Corporation in America showed that 9 out of 10 adult drivers, and all those with a traffic violation record, rated themselves above average in both their driving skill and their compliance with the traffic law."

The role of psychology and motivation research is important in changing human behaviour patterns and attitudes. Motivation research seeks to examine the real reasons for speeding, for driving too close to the vehicle ahead, for driving rashly and for competitive driving on the roads etc.

The first difficulty arises even before the vehicle is built. The problem is one of image. In order to sell his product, the manufacturer gives his product an image by depicting it to be a spectacular, fast, powerful and robust vehicle. He employs advertising techniques which depict his product racing at high speeds across wide open terrain, being driven in a manner which can only be described as being reckless, and certainly in a manner which would be against the law under normal driving conditions. How can such advertising generate a healthy, safety-orientated driving attitude among the public?

Traffic fatalities have recently risen sharply in the Canadian province of Alberta (32). Safety officials suspect that aggressive driver behaviour is a key cause (33). Mr. Jim Roy, manager of planning and evaluation for Alberta's transportation safety branch has said that in Alberta's economic climate "there's a lot of opportunity for people to get ahead if they push" (34) and indications are that that kind of attitude could well be reflected in their driving habits. In the fast-paced society, it is common to find people hurrying to get somewhere. Mr. George Demery, safety co-ordinator for the Alberta Safety Council agrees that with aggressive driving "comes erratic lane changes, cutting in, the me-first attitude, tail-gating and so on." (35). Aggressive driving is particularly noticeable among younger drivers.

The desire to express masculinity through the use of a motor vehicle is a serious problem. There is no doubt that such a desire is quite often the cause of showing off, of aggressiveness and of a spirit of competition on the road among single male drivers under 25 years of age. This frequently leads to speeding, cutting in, overtaking dangerously and to otherwise dangerous conduct on the road. It may be possible, through public information programs to alter the type of road behaviour which is associated with masculine expression and to generate a state of mind in which masculinity is associated with self-discipline, driving skill, and consideration towards other road users. It has been shown to be effective to provide a financial incentive and reward for single male drivers under 25 years of age who maintain safe driving records (36).

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(32) SUPRA, p. 17

(33) see "Pushy drivers' run head-on into death" Edmonton Journal, May 24th, 1980 p. B3.

(34) IBID.

(35) IBID.

In many jurisdictions, the wearing of seat belts is mandatory (37). In other jurisdictions, seat belt installation is mandatory, but their use is not. The benefits of wearing a seat belt are well documented, and where they are required to be worn compulsorily, dramatic increases in their use has resulted. In every case, this increase has led to significant reductions in deaths and injuries in motor vehicle accidents.

In Australia, drivers and front-seat passengers have been required to wear seat belts since 1970. Belt wearing rates (in cars that had belts installed) in all Australian states increased from approximately 20% before the law was passed to approximately 70% three years later. Since 1973, there has been a steady increase in belt use to 90% in 1976. Victoria and New South Wales have achieved and maintained a better than 20% drop in deaths.

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(36) The British Columbia Autoplan insurance scheme provides a Safe Driving Incentive Grant which, for 1980, was the equivalent of 25% of the 1979 Autoplan insurance premium. The Grant is available, subject to certain exceptions, to single male drivers under the age of 25 who maintain a safe driving record over a specified period of time. With the introduction of the B.C. "F.A.I.R." scheme in from 1981 onwards, it will take the place of the Driving Incentive Grant (see p. 140 post).

(37) In Canada: Quebec, Ontario, Saskatchewan and British Columbia make the use of seat belts compulsory while driving or riding in a car. The belts are required to be worn "in a properly adjusted and securly fastened manner." Seat belts are also compulsory, in among others: Australia, Belgium, Czechoslovakia, Finland, Germany, Israel, Japan, Luxembourg, New Zealand, Netherlands, Norway, Spain and Sweden.

Similarly, in New Zealand, increased seat belt use has led to a reduction in fatalities to drivers and front seat passengers. Fatalities to other passengers who were not required to wear seat belts, have increased. Injuries, especially head injuries, shock and injuries caused by striking the windshield decreased when seat belts were worn (38).

Finland, Sweden, Norway, Belgium and the province of Ontario have all recently experienced increased usage rates and corresponding reductions in injuries and deaths from motor vehicle accidents. In Finland, it was found that 88% of drivers observed were wearing belts. Sweden measured 84% belt use for front-seat passengers and the number of seriously injured occupants in car accidents has been reduced by 46%. During the first four months of mandatory seat belt use, Belgium also reported decreases in deaths and injuries. Deaths were down 53.8%, severe injuries were down 28% and minor injuries 20.9%. Preliminary findings in Ontario indicate that belt use has increased from 17% before the law was passed to 66% six months later. For the first six month of 1976, when the use of seat belts was mandatory in Ontario, the number of deaths was 21% below the number predicted on the basis of ten years' fatality figures (39).

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(38) see "Evaluation of the New Zealand Compulsory Seat Belt Legislation" (by J.B. Toomath) Traffic Research Report No. 17 (Ministry of Transport, Wellington, New Zealand) 1976.

(39) Extracted from "The Human Collision" Transport Canada (Road Safety) TP 454 CTS-2-76 (1976).

Although the scientifically and practically proven benefits of wearing seat belts are well documented and strongly supported, for a variety of reasons few people wear them voluntarily. One of the most common reasons given for not wearing them is that they are uncomfortable. Other reasons include fear that the belt will trap them in their cars, the belief that good drivers do not need them, and some simply feel that they are too much trouble. Once again it is through intensive public information programs that people can be persuaded to use belts, whether or not the law requires their use. The slogan used in England to encourage the use of seat belts is 'Clunk-click, every trip'.

In recent times the passive restraint safety belt system has been developed and the National Highway Safety Administration of the United States will require such systems to be fitted on all cars sold in the United States by 1984. These systems are either seat belts that snap into place automatically when the doors of the car are closed, or air bags which inflate on impact to form a cushion of air in front of the driver and passengers. The automatic safety belt system is favoured over the air bag system because the accidental triggering of an air bag could in itself cause an accident and automatic seat belts are cheaper to install. Transport Canada is also evaluating these systems.

A very serious problem is drinking and driving (40). In spite of a number of safety measures, alcohol continues to play a substantial role in increasing a road user's chances of being involved in an accident. Equally so, drugs are beginning to create a new problem with an increasing consumption of drugs which affect the central nervous system. As many as one-third to one-half of fatal accidents to adults involve drivers with measurable alcohol and/or drug presence.

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(40) see "Research on the role of alcohol and drugs in road accidents", Organization for Economic Co-Operation and Development Road Research Group Report - Paris 1978.

In England, alcohol accounts for at least one in ten of all deaths and injuries on the roads and its share is growing. The proportion of drivers killed in accidents who have a blood alcohol concentration ('BAC') above the legal limit is today higher than it has ever been and the social cost of road accidents involving alcohol is estimated to be in excess of £100 million a year (41).

Stringent countermeasures against the alcohol impaired driver have been put into force in many countries. With the passing of the Road Safety Act 1967 in England, it was shown what could be achieved through strict legislation. After the Act came into force, over a thousand lives were saved in the first year, and a further 4,000 in later years.

Public attitudes changed substantially and opposition to strong and effective measures against the drinking driver has to a large extent subsided. There is no other country in which drinking and driving laws have led to such large demonstrable savings. The success of the Act was impressive but only temporary and the fall in casualties, which was largely accounted for by a reduction of a third in accidents between ten at night and four o'clock in the morning has since worn off. Before the Act came into force, 25% of drivers who died in accidents had over 80 mg/100 ml. of alcohol in their blood. This fell to 15% in 1968, but had risen to 26% by 1971 and to 35% by 1974.

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(41) "Drinking and Driving" Department of the Enviroment Report of the Departmental Committee in 1976 p. 1. (HMSO London).

Of particular concern is the fact that in 1971, 40%, and by 1974 45% of those in their twenties who were killed were over the legal limit and that drinking and driving is one of the most common circumstances leading to death in this age group.

The relatively recent availability of scientific methods for assessing blood-alcohol levels from breath samples has made it easier for law enforcement authorities to detect the alcohol impaired driver. Some countries are proposing legislative changes to permit broader application of breath analysis by police.

A number of new safety measures are presently under review by the Organisation for Economic Co-operation and Development. As well as laws which are directed at prohibiting drinking and driving, others may indirectly influence drinking and driving. These include regulations which restrict the drinking age, the driving age and the sale of alcoholic beverages (42). A number of mechanical deterrents are also being considered. In-vehicle interlock systems (43) have been proposed to prevent the drinking driver from starting his car. One type requires the driver to successfully complete a performance task before the vehicle will start, and an example is the General Motors "Phystester". With this piece of equipment installed, when the ignition is switched on, a series of five digits appears for several seconds on a miniature display panel. The driver is then required to punch the same sequence of digits on a push-button key board before the car will start and failure to respond correctly three times with a different series of digits, renders the car starter inoperative for about half an hour. An alternative system has been developed by the Bosch Company in Germany, which requires the driver to input a specific combination of answers into a key board, which is followed by the presentation of a series of signs and figures. These mechanisms require further development for at present, the device is not sophisticated enough to differentiate between impaired and unimpaired drivers: some impaired drivers are able to pass the test while some sober individuals, especially older drivers are failing the test.

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(42) "New research on the role of alcohol and drugs in road accidents" OECD Report, pp.96-99, Paris 1978 pp. 96-99.

(43) IBID p. 99.

A second type of device which cuts the ignition starter circuit if it detects the presence of alcohol in the car has been developed by Honda. It is not, however, clear whether a drunk passenger could immobilize the car for a sober driver.

If has been suggested that part of the problem with driving while impaired (DWI) convictions is the anonymity of the conviction. It has been said that if the potential for public embarrassment was present, then a greater number of persons may reconsider driving while impaired. It has been suggested that special licence plates by which the convicted DWI driver could be publicly identified, would achieve this objective that special licence plates by which the convicted DWI offender could be publicly identified would achieve this objective (44).

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(44) "New research on the role of alcohol and drugs in road accidents" OECD Report, p.101, Paris 1978.

This chapter has attempted to give some insight into how much death and personal injury sustained accidentally as a result of the use of a motor vehicle society is prepared to tolerate in its quest for personal mobility. An attempt has also been made to examine various practicable ways of reducing the level of such death and injury.

However effective road safety measures are and however careful road users are in using the road, accidents will occur. Accidents arise because of any number of variables and it is not possible to predict when these will prevail to give rise to an accident. Given that some accidents are bound to occur, a mechanism through which compensation for the victims of these accidents is provided, must be an essential part of every modern society. Compensation can be provided through a number of different mechanisms, and it is the aim of the remainder of this study to examine firstly the tort compensation system, secondly, the pure no-fault system, and finally, the mixed tort/no-fault system.

CHAPTER TWO

THE TORT COMPENSATION SYSTEM

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Today, the most common tort would seem to be negligence in the operation of a motor vehicle. In the United Kingdom, for example, there are approximately 100,000 tort claims in respect of injury or death arising out of motor vehicle accidents each year and such claims account for 70% of all tort claims in respect of death and for about 40% of all tort claims made in respect of non-fatal injury (1).

Of all the branches of English law, the law of tort is most deeply imbedded in the past: it is an area of the law which has its origins in old forms of action under which a variety of acts or omissions were held to be tortious (2). From these a number of specific heads of tort, each governed by its own distinctive and specialized history, have developed to form the modern law of tort. It is the principles which underlie the tort of negligence which are of paramount importance in tort law's adjudication of claims arising out of accidental personal injury or death.

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(1) ROYAL COMMISSION ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY (U.K) Cmnd. 7054-III, para. 199 March 1978, (HMSO, London).

(2) "Tortious liability arises from the breach of a duty primarily fixed by law; such duty is towards persons generally and its breach is redressible by an action for liquidated damages": Winfield and Jolowicz on Tort, p.1. 10ed., Sweet & Maxwell, London, 1975.

(A) THE TORT OF NEGLIGENCE

In the well-known case of Donoghue v. Stevenson (3), Lord Atkin said:

> "Acts or omissions which any moral code would censure cannot in a practical world be treated so as to give a right to every person injured by them to demand relief. In this way rules of law arise which limit the range of complainants and the extent of their remedy." (4).

At common law the philosophy was that any loss sustained by one person through the act of another should lay where it fell unless the victim could show that the loss was attributable to the fault of the other. Tort law has devised rules of law which limit the range of complainants and the extent of their remedies. Today, an action in negligence will succeed only when the plaintiff can show that (a) there was a legal duty on the part of the defendant towards him; (b) there was a breach of that duty; and (c) there has been consequential damage to the plaintiff as a result of that breach. These are the three elements of the tort of negligence and in deciding whether or not they were present at the time the injury was sustained, the court decides whether, on the facts of the case, the plaintiff falls into the category of persons who ought to be compensated by the defendant for his losses and if so, the extent of the damages.

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(3) [1932] A.C. 562.

(4) IBID at p. 580.

1. The duty of care

The majority of negligence actions arise out of road accidents where injury or death is inflicted directly by physical collision. In these cases it is well established that negligence on the road gives rise to liability in tort. It has been an accepted fact since at least the seventeenth century in England (5) that every person using the road owes a duty of care towards other road users. In 1875, in the case of Holmes v. Mather (6), Bramwell, B. said:

> "For the convenience of mankind in carrying on the affairs of life, people as they go along roads must expect, or put up with such mischief as reasonable care on the part of others cannot avoid."

The fact that a road user owes a duty of care towards other road users is, today, such a well accepted principle of law that a lawyer would scarcely ever waste time in an ordinary accident case by enquiring whether the defendant owed a duty of care to the plaintiff. Contention more commonly arises over whether the plaintiff breached his duty of care by his conduct and if so whether his negligence caused the plaintiff's injuries.

Nevertheless, in deciding whether the defendant owed the plaintiff a duty of care, the court must make a policy decision: it must decide whether there should or should not be a duty in the fact situation which gave rise to the injury, and in recent years there has been an increasing willingness on the part of the judges to admit that considerations of policy must, from time to time, play a major part in the making of such a decision (7).

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(5) see Gibbons v. Pepper (1695) 1 Ray, 38; 91 E.R. 922;
Leame v. Bray (1803) 3 East 593; 102 E.R. 724;
Williams v. Holland (1833) 10 Bing. 112; 197 E.R. 868.

(6) (1875) L.R. 10 Exch. 261.

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(7) In the Canadian case of Nova Mink Ltd. v. Trans-Canada Airlines [1951] 2 D.L.R. 241, 254, MacDonald J. said: "When upon analysis of the circumstances and application of the appropriated formula, a court holds that the defendant was under a duty of care, the court is stating as a conclusion of law what is really a conclusion of policy as to responsibility for conduct involving unreasonable risk. It is saying that such circumstances presented such an appreciable risk of harm to others as to entitle them to protection against unreasonable conduct by the actor."; in Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd. [1963] 2 All E.R. 575, the House of Lords held that in certain circumstances, an action for negligence could arise out of careless statements relating to financial matters; once again the policy consideration was apparent in the words of Lord Pearce (at p. 615): "How wide the sphere of the duty in negligence is to be laid depends ultimately upon the court's assessment of the demands of society for protection from the carelessness of others." In the case of Dutton v. Bognor Regis United Building Co. [1972] 1 Q.B. 372, the words of Lord Denning, M.R. are clear: "In previous times, when faced with a new problem, the judges have not openly asked themselves the question: what is the best policy for the law to adopt? But the question has always been there in the background. It has been concealed behind such questions as: Was the defendant under any duty to the plaintiff? Was the relationship between them sufficiently proximate? Was the injury direct or indirect? Was is forseeable or not? Was it too remote? And so forth. Nowadays we direct ourselves to considerations of policy . . . In short, we look at the relationship of the parties; and then say, as a matter of policy, on whom the loss should fall . . . ." See also Home Office v. Dorset Yacht Co. Ltd. [1969] 2 All E.R. 564, 567, per Denning, M.R. and Lord Diplock's judgment when the case reached the House of Lords - [1970] 2 All E.R. 294 (H.L.)

Indirect injury: Most road accident injury is inflicted directly by the collision of two physical bodies but damage can be caused indirectly through, for example, nervous shock. The common law of tort has dealt with indirectly inflicted damage on a different footing. In the case of Bourhill v. Young (8), the parties involved were fifteen yards apart from each other. The plaintiff (a fishwife), alighted from a tramcar and while the tramcar driver was assisting her in putting her basket on her back, a motor-cyclist passed the tram and immediately afterwards negligently collided with a motor car. The motor-cyclist was killed. The fishwife saw neither the motor-cyclist nor the accident which occurred about fifteen yards from the spot at which she had alighted from the tramcar. At the time that the accident occurred, the plaintiff's view of it was obstructed by the tram, but she heard the collision and after the motor-cyclist's body had been removed she approached the spot and saw blood on the road. As a result of this she sustained nervous shock and gave birth to a stillborn child of which she was eight months pregnant. She sued the personal representatives of the motor-cyclist for the motor-cyclist's negligence. The House of Lords held that she could not recover on the grounds that she was an unforseeable plaintiff and that the motor-cyclist had owed her no duty of care. In so holding, the House of Lords established the rule of law that a person shocked by witnessing an accident cannot, without more, sue the person at fault in causing it. Where there is some certain further ingredient in the circumstances, the courts have been prepared to entertain claims. Claims for nervous shock have been entertained where the plaintiff might have been personally endangered (9), or where there was a special relationship between the plaintiff and the victim such as a family relationship (10), or where the accident was a particularly gruesome one (11).

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(8) [1943] A.C. 92.

(9) See Dulieu v. White [1901] 2 K.B. 669.

In the ordinary case, however, contention more commonly arises over whether the defendant breached his duty of care by his conduct and whether this breach caused the plaintiff's injuries.

2. The breach of a duty of care

(a) The standard of care

Every road user owes a duty of care to other road users in situations and in circumstances in which the courts have or may decree, as a matter of policy, that he should or ought to. If a road user fails to discharge that duty of care, his conduct will be regarded as being negligent. In discharging his duty of care, his conduct must meet a certain acceptable standard and that standard is the standard of conduct which would be expected of a reasonable man (12). The questions which the court purports to pose in evaluating whether a defendant's conduct amounts to negligence are: (a) How would a reasonable man have acted in the circumstances? and (b) Has the defendant's conduct lived up to that of which is to be expected of the reasonable man in the circumstances? The test applied in deciding whether there has been a breach of duty was originally laid down by Baron Alderson in 1856 in the case of Blyth v. Birmingham Waterworks Co. (13), and it is still applicable today:

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(10) See Hambrook v. Stokes Bros. [1925] 1 K.B. 141; in Hinz v. Berry [1970] 2 Q.B. 40, under the plaintiff's very eyes, a runaway Jaguar motor car ploughed into a lay-by where her husband and several children were preparing a picnic: her husband was killed and most of the children badly injured. Although she was still suicidal two years later and frequently broke down at the trial, the English Court of Appeal thought the judge's low award of £4,000 (C$10,000) on the high side.

(11) See Chadwick v. British Railway Board [1967] 1 W.L.R. 912.

(12) Or, today "person".

> "Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. The defendants might have been liable for negligence, if, unintentionally, they omitted to do that which a reasonable person would have done, or did that which a person taking reasonable precautions would not have done." (14).

Who is this fictional character, the reasonable man? In the case of Hall v. Brooklands Auto-Racing Club (15), Green, L.J. depicted him as "the man on the Clapham omnibus". Linden states that "in Canada today it might be more appropriate to portray this creature as the person on the Yonge Street subway" (16).

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(13) (1856) 11 Ex. 781.

(14) IBID at p. 784.

(15) [1933] 1 K.B. 205, 224.

(16) LINDEN: "Canadian Tort Law" p. 92 Butterworths, Toronto 1977.

It has been said that the reasonable man does not have "the courage of Achilles, the wisdom of Ulysses or the strength of Hercules" (17).

In short, he is not perfect. Harvey, C.J. in Carnat v. Matthews (18), recognized that "even the most excessively careful man will sometimes have an accident". Lord Reid, in Billings & Sons Ltd. v. Riden (19) recognized that the reasonable man is not a "paragon of circumspection", and Romer, L.J. in Hawkins v. Couldsdon & Purley U.D.C. (20) recognized that the reasonable man does not have the "prophetic vision of a clairvoyant". Sir Alan Herbert has depicted the reasonable man to be one who never:

> "swears, gambles, or loses his temper, ... uses nothing except in moderation, and even while he flogs his child is mediating with not one single saving vice, sans prejudice, procrastination, ill-nature, avarice, and absence of mind, as careful for his own safety as he is for that of others, this excellent but odious creature stands like a monument in our Courts of Justice, vainly appealing to his fellow citizens to order their lives after his own example". (21).

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(17) WINFIELD & JOLOWICZ ON TORT: p. 26 10ed. Sweet & Maxwell, London 1975 .

(18) (1921) 59 D.L.R. 505, 508 (Alta. C.A.)

(19) [1958] A.C. 240.

(20) [1954] 1 Q.B. 319, 341.

(21) A.P. HERBERT: "The Uncommon Law", pp. 1-6 7ed, 1952.

The conduct of a driver is measured against the conduct of a reasonable man behind the wheel of a car, and although the reasonable man is not perfect, a defendant will be unable to escape liability by claiming that he is by nature forgetful, inattentive, absent-minded, impulsive or unskillful and that because of these factors he could not help behaving as he did, for the reasonable driver is taken never to be burdened with such qualities.

The reasonable man is both famous and elusive: much literature has been generated about him and his qualities but no one has yet identified him. It is not surprising that this should be the case for the reasonable man is a concept and is merely a personification of the court's social judgment. In the words of Lord Macmillan:

> "It is . . . left to the judges to decide what, in the circumstances of the particular case, the reasonable man would have in contemplation, and what accordingly the part sought to be made liable ought to have foreseen." (22).

In practice, the concept of the reasonable man, at least if he is taken to mean the average person, is of some assistance to the court in setting the standard of care in particular circumstances, and in providing an atmosphere of objectivity. Atiyah (23) notes that if a judge were to say to a defendant: 'You have failed to do what I think you should have done and that amounts to negligence', the defendant may come away thinking of the judge, 'Who does he think he is?'. But if the judge says: 'You have failed to do what the reasonable man would have done and that amounts to negligence', then the defendant may come away with more respect for the judge and the law.

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(22) Glasgow Corporation v. Muir [1943] A.C. 448, 457.

(23) P.S. ATIYAH: "Accidents, Compensation and the Law" p.41 2ed. Weiden and Nicolson, London 1975.

(b) The burden of proof

Although it is usually taken for granted that a road user owes a duty of care towards other road users, whether or not the defendant has breached that duty by his conduct is a question which the court must decide in every tort action: in other words, does the defendant's conduct amount to negligent conduct? Commonly, it is a matter of verifying certain facts: did the defendant go through a red light?, did the defendant overtake where road markings clearly prohibited it?, did the defendant travel at a reckless speed and without due care and attention?, did the defendant give proper signals? Often, however, the plaintiff is faced with establishing negligent conduct which may have lasted only for a split second and in such circumstances the plaintiff will invariably encounter difficulties of an evidentiary nature. The best form of evidence that he can hope for is the testimony of an independent witness. This attempt to re-create the accident, which itself may have lasted only a few seconds, from the memories and from the often contradictory evidence of a number of witnesses with an aim of ascertaining who was at fault is an essential part of the tort compensation system. Under tort, because there is no liability in the absence of fault, the plaintiff must be able to show, on the balance of probabilities, that the defendant conducted himself negligently in order to be victorious in his action. Should he fail to discharge the burden of proof placed upon him, tort will deny him the right to seek compensation from the defendant.

Under normal circumstances, the burden of proof is on the plaintiff: it is he who must establish that there was negligence on the part of the defendant causing his injuries. The doctrine of "res ipsa loquitur" (meaning: the facts speak for themselves) does, however, assist the plaintiff in certain circumstances. The doctrine applies where the plaintiff is able to prove facts which, without directly proving negligence, raise a prima facie inference that the defendant must have been negligent. The burden of proof then shifts to the defendant and the plaintiff wins the case unless the defendant can rebut the inference by contrary evidence. If a car mounts a sidewalk and strikes a pedestrian or if a car strikes a pedestrian at a controlled pedestrian crossing, a prima facie inference of negligence arises, which the driver may rebut if he is able to do so. In these cases, the inference is often conclusive so that the court assembles only to decide upon the quantum of damages.

Certain statutes may also shift the burden of proof from the plaintiff to the defendant. In England, the Civil Evidence Act 1968 (24), reverses the common law rule that a conviction may not be used as evidence in civil proceedings which rule was established in the case of Hollington v. F. Hewthorn & Co. Ltd. (25). The Act provides that if a person is proved to have committed an offence then he shall be taken to have committed that offence unless the contrary is proved. A plaintiff in an action for negligence may therefore, succeed simply upon proving that the defendant has been convicted of an offence in respect of conduct which is complained of as being negligent (26), unless the defendant can discharge the burden of proving that he was not in fact negligent (27). In order for the provisions of this Act to become operative the defendant must be proved to have been convicted of a relevant conviction.

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(24) c. 64, s. 11

(25) [1943] K.B. 587

In Alberta "Where a person sustains loss or damage by reason of a motor vehicle in motion, the onus of proof in any civil proceeding that the loss or damage did not entirely or solely arise through the negligence or improper conduct of the owner or driver of the motor vehicle is upon the owner or driver thereof" (28). This section does not, however, apply in the case of a collision between motor vehicles on a highway (29).

The purpose of the doctrine of "res ipsa loquitur" and of statutory provisions such as those referred to above is to ease the evidentiary difficulties which plaintiffs commonly have in having to establishing negligent conduct.

The principles of negligence are extended by the rule of vicarious liability so that, for example, an employer-owner is vicariously liable as an employer for the negligence of his employee truck driver, if the employee is acting within the scope of his employment, irrespective of the fact that the owner himself was wholly free from blame. By instructing his drivers to engage in activities on his behalf, the employer creates the possibility and the risk that they may negligently injure other persons.

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(26) see: Wauchope v. Mordecai [1970] 1 W.L.R. 317.

(27) see: Stupple v. Royal Insurance Co. Ltd. [1971] 1 Q.B. 50.

(28) The Highway Traffic Act, S.A. 1975 c. 56, s.158(1).

(29) IBID, s.158(2).

Some principles of law, and more particularly those of contributory negligence and "volenti non fit injuria" will aid the defendant if he can invoke them.

(c) Contributory negligence

The defendant can either defeat the plaintiff's claim or at least secure a reduction of the damages, by showing that the accident concerned was either wholly caused by or at least contributed to by the negligence of the plaintiff himself.

In England, prior to 1945, contributory negligence on the part of the plaintiff was a complete defence to any tort claim. In that year, the Law Reform (Contributory Negligence) Act altered the position by providing that negligence by the plaintiff which was merely contributory would no longer operate so as to bar his claim entirely, but that instead, it would reduce the damages awarded to the extent to which he was to blame for the accident. In deciding whether negligence on the part of the plaintiff is present, the standard of care is the same for the plaintiff as it is for the defendant (30).

In the context of traffic accident injury, contributory negligence has been held to include the failure by drivers and front seat passengers to wear seat belts. In the case of Froom v. Butcher (31), it was held in the English Court of Appeal by Lord Denning, M.R. that, in cases where liability was not in dispute, a driver or front seat passenger would normally have his damages reduced by 25% if the injuries could have been entirely avoided by wearing a seat belt, and by 15% if injuries would have been less severe, on the premise that although the failure to wear a seat belt does not in itself cause accidents, it may aggravate the resultant injuries.

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(30) In Alberta, The Contributory Negligence Act, RSA 1970, c.65, is of similar effect.

(31) [1976] Q.B. 286.

(d) Volenti non fit injuria

If the plaintiff has knowingly and voluntarily taken on the risk of injury, it is open to the defendant to plead the defence of "volenti non fit injuria" (the volunteer suffers no wrong). Attempts to plead the defence have been made by drivers who are sued by their passengers for damages arising out of accidents which occur at a time when both the defendant driver and the plaintiff passenger are intoxicated. In such cases the defence has failed since the passenger, because of his impairment, is usually held not to have been in a position in which he could have knowingly consented to the risk of travelling with the impaired driver (32).

3. Consequential damage

Once it is established that the defendant owed the plaintiff a duty of care and that he breached that duty by his negligent conduct, the plaintiff has fulfilled the first two conditions for recovering damages from the defendant. However, his action will succeed only if he can establish the third ingredient of the tort of negligence: that his damage was caused by the defendant's breach of duty and that it was not too remote a consequence of it.

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(32) see the leading case of Dann v. Hamilton [1939] 1 K.B. 509.

(a) The 'but-for' test

The most widely accepted technique for determining a causal relationship between the defendant's conduct and the plaintiff's loss is the "but for" ("sine qua non") test. In the words of the then Denning, L.J.:

> "Subject to the question of remoteness, causation is a question of fact. If the damage would not have happened but for a particular fault, then that fault is the cause of the damage; if it would have happened just the same, fault or no fault, the fault is not the cause of the damage. It is to be decided by the ordinary plain common sense of the business" (33). (Emphasis added)

(b) Remoteness of damage

In theory, the consequences of an act stretch into infinity. In practice, however, legal liability must have certain limitations. "It were infinite for the law to consider the causes of causes, and their impulsions one of another: therefore it contenteth itself with the immediate cause, and judgeth of acts by that without looking to any further degree." (34).

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(33) in Cork v. Kirby Maclean Ltd. [1952] 2 All E.R. 402, 406-407.

(34) "Maxims of the Law" (1630), Reg. 1.

Generally, consequences are too remote if a reasonable man would not have foreseen them (35), subject to the common law principle that:

> "if a man is negligently run over or otherwise negligently injured in his body, it is no answer to the sufferer's claim for damages that he would have suffered less injury or no injury at all, if he had not had an unusually thin skull or an unusually weak heart." (36).

If the injuries inflicted upon a plaintiff in an accident are exacerbated because of his pre-accident abnormal condition, it is well-established (37) that the defendant will be liable to pay damages not only in respect of the results of his own negligence but also for the dramatically exaggerated effect of his negligence on that particular plaintiff. The defendant must take his victim as he finds him: this is commonly referred to as the "egg-shell skull" principle.

(B) COMPENSATING THE VICTIMS OF TORT

This part of chapter two attempts to examine some of the practical aspects of how the tort compensation system operates in England.

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(35) see generally: In Re Arbitration between Polemis and Furness, Withy & Co. [1921] 3 K.B. 560; and Overseas Tankship (U.K.) Ltd. v. Morts Dock & Engineering Co. (Wagon Mound) [1961] A.C. 388, [1961] 1 All E.R. 404.

(36) Dulieu v. White [1901] 2 K.B. 669, 679 per Kennedy, J.

(37) see: Smith v. Leach Brain & Co. Ltd. [1961] 3 All E.R. 1159 and Robinson v. The Post Office [1974] 2 All E.R. 737.

1. The heads of claim (38)

This part deals with the heads under which tort damages may be claimed and is divided into the following areas: pecuniary loss due to personal injury, non-pecuniary loss due to personal injury, damages following death, and the actions for loss of services and loss of consortium.

(a) Pecuniary loss due to personal injury

Loss of income

At present, in a successful action for damages in tort in respect of personal injury, pecuniary loss is compensated in full. In England, as a result of the Court of Appeal decision of Oliver v. Ashman (39), damages for future loss of income are awarded only for the period for which the plaintiff is expected to remain alive. The plaintiff in Oliver v. Ashman was a young boy, whose life expectation was estimated to have been reduced by 30 years as a result of a serious brain injury. It was held that damages for loss of income during the 'lost years' when the plaintiff would probably have remained alive if he had not been injured, were to be regarded as part of the damages for loss of expectation of life. These had, in effect, been set at a small conventional figure on the basis of the earlier decision of the House of Lords in Benham v. Gambling (40).

Some criticism has been levelled at the rule laid down in Oliver v. Ashman, on the grounds that it can operate unfairly when applied to adult plaintiffs with dependants (41). Under the rule as it stands, if, for example, the life expectancy of a young married man is reduced by an injury from 40 years to 5 years, he can recover damages for loss of income for 5 years, and the small conventional sum for loss of expectation of life, yet after his death, his dependants can recover nothing more, since it is not possible to bring a second action in tort in respect of the same injuries. Conversely, if a young man is killed instantaneously, his dependants can claim damages for lost dependency in respect of the full 40 years. Not surprisingly, it has been recommended that damages for loss of income by a living plaintiff should be recoverable on the basis of his pre-accident life expectancy, subject to a deduction for the amount which he would have spent on his own living expenses (42).

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(38) See ROYAL COMMISSION ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY (U.K.), Cmnd. 7054-I, chapter 12, March 1978, (HMSO, London).

(39) [1962] 2 Q.B. 210.

(40) [1941] A.C. 157.

Recent English cases such as Moeliker v. A. Reyrolle & Co. Ltd. (43) appear to have established that damages for loss of earning capacity should be awarded if there is a significant risk that the plaintiff, because of the injuries which he has sustained, will at some time in the future lose his job, irrespective of whether he is suffering any loss of earnings at the time of the trial.

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(41) See Law Commission Report on Personal Injury Litigation - Assessment of Damages, (UK) July 1973 (Law Com No. 56, HC 373); and English Court of Appeal decision in Pickett v. British Rail Engineering Ltd. ("The Times", November 19, 1977); see also ROYAL COMMISSION REPORT ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY (U.K.), Cmnd. 7054-I paragraphs 330-336, March 1978 (HMSO, London).

(42) IBID, para. 335.

(43) [1977] 1 All E.R. 9.

Expenses

Under tort, damages are presently recoverable for all expenses reasonably incurred or likely to be incurred by the plaintiff as a result of his injury. Among these may be included the cost of domestic help, nursing care or similar attendance, and the purchase of special appliance needed to help overcome difficulties associated with physical disability. Medical expenses may also be included, and in England, the Law Reform (Personal Injuries) Act 1948 (44), requires the court to disregard, in determining the reasonableness of medical expenses, the possibility of avoiding all or part of them by taking advantage of facilities provided by the state within the scope of the National Health Service. The provision in the Act gives rise to the possibility of double compensation in the situation where a plaintiff recovers damages on the basis that he will incur private medical expenses and then proceeds to obtain free medical treatment under the National Health Service. A further difficulty lies in the situation where a plaintiff does choose to undergo private medical treatment, which is available to him free of charge under the National Health Service. The question is, in this situation: should the defendant be called upon to meet the private medical bill? As the law stands at present, the plaintiff is perfectly entitled to do so in England, although certain law reforms have been recommended to eliminate these apparent difficulties (45).

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(44) s. 2(4).

Services rendered and expenses incurred by others for the plaintiff's benefit

It is likely that friends and relatives will render certain services helping the plaintiff to cope with his injury: a wife may look after her injured husband at home and other relatives and friends may incur expenses for his benefit such as travelling expenses when visiting him in hospital.

There are certain difficulties involved in compensating losses of this nature. Some were considered in the English Court of Appeal by Megaw, L.J. in the case of Donnelly v. Joyce (46), who said:

> "We do not agree with the proposition . . . that the plaintiff's claim, in circumstances such as the present, is properly to be regarded as being . . . in relation to someone else's loss merely because someone else has provided to, or for the benefit of, the plaintiff - the injured person - the money

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(45) See ROYAL COMMISSION ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY (U.K.), Cmnd. 7054-I, para. 342 March 1978 in which it is recommended that s.2(24) of the Law Reform (Personal Injuries) Act 1948, be repealed; in its place, it was recommended that private medical expenses should be recoverable in damages if and only if it was reasonable on medical grounds that the plaintiff should incur them.

(46) [1974] Q.B. 454.

> . . . to provide for the needs of the plaintiff directly caused by the defendant's wrongdoing. The loss is the plaintiff's loss. The question from what source the plaintiff's needs have been met, the question whether or not the plaintiff is or is not under a legal or moral liability to repay, are, so far as the defendant and his liability are concerned, all irrelevant. The plaintiff's loss, to take this present case, is not the expenditure of money to buy the special boots or to pay for the nursing attention. His loss is the existence of the need for those special boots or for those special nursing services, the value of which for purposes of damages - for the purpose of the ascertainment of the amount of his loss - is the proper and reasonable cost of supplying those needs. That, in our judgment, is the key to the problem. So far as the defendant is concerned, the loss is not someone else's loss. It is the plaintiff's loss".

After reciting this passage of Megaw, L.J.'s judgment, the Royal Commission on Civil Liability and Compensation for Personal Injury, in its Report (47), stated that it was attracted by this reasoning so that:

> ". . . If the plaintiff needs to have services rendered or expenses incurred for his benefit, and if this need arises from an injury for which a defendant is liable, then we think he should be able . . . to recover damages. The way in which the need is met is indeed irrelevant. If, for example, the plaintiff's need for attendance is met

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(47) (U.K.) Cmnd. 7054-I (HMSO, London).

> gratuitously by his wife rather than by a suitable paid person, he should not recover less damages. This point of equity assumes considerable practical importance where the gratuitous rendering of a service brings about a fall in family income, for example, if a member of the plaintiff's family gives up work to care for him. In such cases, it is in our view just to consider the value of the services rendered, and the impact of the defendant's action to the family as a whole." (48).

In connection with the above, English courts, until the decision of Donnelly v. Joyce, occasionally required the plaintiff to give an undertaking to repay the damages to the person who actually rendered the services or incurred the expense (49). Such requirements seem to be taking the issue too far and the better reasoning is that given by Megaw, L.J. in the passage of his decision in Donnelly v. Joyce quoted above, the essence of which is that damages are awarded for the plaintiff's loss and it is for him to dispose of them as he thinks fit, and in any case, the damages awarded will very often be to compensate for losses suffered by a family pool. The present criterion applied by the court in assessing such damages is reasonableness.

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(48) ROYAL COMMISSION ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY (U.K.) Cmnd. 7054-I, para. 345, March 1978, (HMSO, London).

(49) see Schneider v. Eisovitch [1960] 2 Q.B. 430; and Cunningham v. Harrison [1973] Q.B. 942, in which Denning, M.R. said, referring to service rendered by a wife, that the husband should recover compensation for the value of the services and hold it in trust for his wife.

Services rendered by the plaintiff

It is likely that others may suffer the loss of service by the plaintiff as a result of his injury. It should be said at the outset that damages for the loss of gratuitously rendered services are not usually recoverable where the victim survives, so that an injured housewife who is deprived of her capacity to look after her family will not normally be permitted to recover damages directly in respect thereof. Although it seems that she and her family have not lost money, their loss is a real one which can be translated into terms of cash if domestic help is retained to fulfill the functions that the injured housewife would normally have fulfilled. It does, however, seem irrelevant to consider the way in which her services are replaced, so that if friends and relatives help out, and if domestic help is not retained damages should nevertheless be recoverable. The criterion employed in assessing compensation for loss of the capacity to render services is reasonableness. In the English case of Regan v. Williamson (50), the court held that it was reasonable to consider that the services of a wife and mother (who had in this case been killed), should not be regarded as limited to the services of a housekeeper and that account should be taken of the fact that a wife does not work set hours, and that she is able to give instruction to her children.

(b) Non-pecuniary loss due to personal injury

No amount of money will suffice to compensate some victims of motor vehicle accidents for the pain and suffering which they endure, and certainly no amount of money can restore a permanent invalid to his pre-accident level of physical health and mobility. Money simply cannot make good a non-pecuniary loss, and yet damages for non-pecuniary loss are recoverable under English law. Three functions of such compensation are commonly propounded. The first is that such an award may serve as a palliative; the second is that an award for non-pecuniary loss may enable the plaintiff to purchase alternative sources of satisfaction to replace those he has lost; the third is that he may draw upon the award to meet hidden expenses caused by his injury, which at the time that he obtained compensation for pecuniary loss may have been unquantifiable or unforeseeable.

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(50) [1976] 1 W.L.R. 305

Loss of expectation of life

In assessing a plaintiff's reduction in life expectancy, any mental suffering caused by the knowledge of his shortened life expectancy will be taken into account in assessing a plaintiff's damages for pain and suffering and for loss of amenity. The plaintiff will be awarded non-pecuniary damages for the fact of loss of expectation of life itself, and any pecuniary damages which he receives will be assessed on the basis of his life expectancy following the accident (51).

The recovery of damages for loss of expectation of life per se in England, originates from the decision of the Court of Appeal in Flint v. Lovell (52) and from the decision of the House of Lords in Rose v. Ford (53). The quantum of such damage awards was considered by the House of

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(51) ROYAL COMMISSION ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY (U.K.), (HMSO, London) Cmnd. 7054-I, para. 363, March 1978.

(52) [1935] 1 K.B. 345.

(53) [1937] A.C. 826.

Lords in the case of Benham v. Gambling (54) in which it was held that damages should be awarded not for the prospect of length of days, but for the loss of the prospect of a predominantly happy life. Recognizing that any estimate of prospective happiness was bound to be uncertain, the House of Lords concluded that, in assessing damages under this head, very moderate figures should be chosen. In Benham v. Gambling, the damage award amounted to £200, which became the conventional figure used until it was reviewed and raised to £500, to take into account of inflation, by the House of Lords in the case of Yorkshire Electricity Board v. Naylor (55) in 1968. Subsequent sums awarded have ranged between £500 and £750 (56).

Under English law, a deceased person's right to sue for damages in respect of the loss of expectation of life survives for the benefit of his estate. Such damages, when awarded, are deducted from any damages which may have been obtained in respect of lost dependency so that, for example, where a widow sues in both her capacity as her husband's dependant and as the administrator of her husband's estate, any damages awarded for loss of expectation of life which may be awarded to the estate will be deducted from any damages awarded for lost dependancy. If no claim is made in respect of lost dependancy, as in the death of a child, damages for the deceased child's loss of expectation of life may constitute a small sum paid to the parents. In the case of the death of a child, there is no other basis upon which compensation can be recovered under English law.

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(54) [1941] A.C. 157.

(55) [1968] A.C. 529.

(56) Although the award ranges between £500 and £750, the courts award smaller amounts if it is felt that the deceased would have led an unhappy life; the court expressed such a sentiment in Burns v. Edman [1970] 1 All E.R. 866, where damages for the loss of the deceased's expectation of life (he was a professional criminal) were assessed at £250.

The main difficulties in compensating loss of expectation of life are that it is not possible to assess how happy the victim might have been if he had lived out his life and it is impossible to evaluate the loss in terms of money. These difficulties have led the courts to fix awards at low levels. There is no compensation available in British Columbia in respect of the loss of expectation of life nor is it available throughout the United States. In England, the Royal Commission on Civil Liability and Compensation for Personal Injury recommended that damages for loss of expectation of life be abolished as a separate head of damage (57).

Pain and suffering and loss of amenity

In England, the present practice of the courts in compensating non-pecuniary loss is to award a single sum of damages for pain and suffering and for loss of amenity. In assessing the award, the court takes into account not only the pain caused by the injury itself but also any pain which is caused by subsequent surgery or medical treatment. Furthermore, the court takes account of the plaintiff's awareness of his physical disability or shortened life expectancy, his fear of future incapacity and his embarrassment or humiliation in being physically disfigured. The term 'loss of amenity' is taken by the courts to mean physical impairment and its non-pecuniary results, other than pain and suffering so that the court may award more compensation to a football player who loses a leg than it might to a chess player who sustains similar injury.

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(57) (U.K.) Cmnd. 7054-I, para.372,March 1978, (HMSO, London).

The quantification of pain and suffering into monetary terms is a very difficult and arbitrary process. In West v. Shephard (58), a decision of the House of Lords, Lord Morris of Borth-y-Gest said this:

> "All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation. Furthermore, it is eminently desirable that so far as possible comparable injuries should be compensated by comparable awards. When all this is said it still must be that the amounts which are awarded are to a considerable extent conventional".

At present, the court assesses non-pecuniary damages in accordance with precedents and the judge's evaluation of the general circumstances. Payments in respect of non-pecuniary loss account for more than half of all tort compensation payments in respect of personal injury, and a particularly high proportion of small payments are made in respect of such loss (59). Debate centres over whether some lower threshold limit should be applied in order to eliminate minor claims for non-pecuniary loss, as much of this compensation is paid out in respect of transient non-pecuniary losses. Those who argue that a lower threshold limit should be applied, hold that the emphasis in compensation for non-pecuniary loss should be on serious and continuing losses, especially loss of faculty, and those who advocate the introduction of a limit have suggested that one be based on the duration of the loss. A three month threshold has been suggested, so that non-pecuniary loss in the first three months after an injury might be totally disregarded, or in the alternative, damages in respect of the first three months might become payable if, and only if, the loss continues thereafter (60). The Royal Commission on Civil Liability and Compensation for Personal Injury, by a majority, recommended that no damages should be recoverable for non-pecuniary loss suffered during the first three months after the date of injury (61).

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(58) [1964] A.C. 326.

(59) ROYAL COMMISSION ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY (U.K.) Cmnd. 7054-I, para. 382, March 1978, (HMSO, London).

On the other end of the scale, some consideration has been given to the imposition of upper limits on damage awards for non-pecuniary loss. Here the argumentation is that large awards represent an excessive allocation of money for the compensation of intangible losses. In England, the limit which was suggested in 1977 was £20,000 (this being five times the average annual industrial earnings at the time). (62)

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(60) IBID, paragraphs 383-389.

(61) IBID, paragraphs 388 and 389: the minority dissented from this recommendation - they considered that damages should continue to be recoverable for non-pecuniary loss suffered during the first three months after an injury. It was estimated that the Royal Commission's proposal would bring about a saving of £44 million one fifth of all tort compensation awards for personal injury.

(62) IBID, para. 391.

Particular difficulties are caused in the assessment of non-pecuniary damages in the situation where the plaintiff has been rendered permanently unconscious by his injuries. Although cases of ~~this nature~~ are comparatively rare, there has been some judicial consideration of this situation and there exists a difference of opinion as to whether or not damage awards should be payable in these cases. The prevailing view of the English courts is that substantial damages should be awarded to a permanently unconscious plaintiff in recognition of the gravity of his injuries, notwithstanding the fact that he is neither aware of his condition nor able to enjoy the use of his damages. Majority decisions based on this approach were given by the Court of Appeal in the case of *Wise* v. *Kaye* (63), and by the House of Lords in *West* v. *Shephard* (64). In the case of *West* v. *Shephard* Lord Morris of Borth-y-Gest said this:

> "An unconscious person will be spared pain and suffering and will not experience the mental anguish which may result from knowledge of what has in life been lost or from knowledge that life has been shortened. The fact of unconsciousness is therefore relevant in respect of and will eliminate those heads or elements of damage which can only exist by being felt or thought or experienced. The fact of unconsciousness does not, however, eliminate the actuality of the deprivations of the ordinary experiences and amenities of life which may be the inevitable result of some physical injury".

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(63) [1962] 1 Q.B. 638.

(64) [1964] A.C. 326.

Conversely, in the Australian case of Skelton v. Collins (65), Windeyer, J. put forward the opposite view, as follows:

> "I am unable myself to understand how monetary compensation for the deprivation of the ability to live out life with faculties of mind and body unimpaired can be based upon an evaluation of a thing lost. It must surely be based upon solace for a condition created not upon payment for something taken away".

In England, it has been recommended that non-pecuniary damages should no longer be recoverable for permanent unconsciousness, on the basis that compensation for non-economic loss is paid out essentially to relieve the plaintiff's suffering, and suffering is by its nature is an experience subjective to the victim (66).

(c) Damages following death

The common law operated on the basis that a personal action dies with the person ('actio personalis moritur cum persona'). The wholly illogical result of this common law principle was that if, through the fault of another, a man was badly injured but survived he might reçover substantial damages; if, on the other hand, the wrongdoer's action resulted in his victim's death then no action in tort could be brought by third parties who suffered thereby. Statutory amendment of the common law, therefore, became necessary and today an action may be brought on behalf of certain dependent relatives of the deceased for pecuniary loss (lost dependency) under the Fatal Accidents Act 1976 in England. Similar legislation exists in other jurisdictions (67). Claims under the English Fatal Accident Act may be made on behalf of the deceased's spouse, parent, grandparent, child, grandchild, brother, sister, uncle, aunt, and in the case of the last four relatives mentioned - their issue. The Act treats relationships by marriage as blood relationships. A legally adopted child is treated the same as a natural child, and an illegitimate child is treated as the legitimate child of his mother and reputed father. Furthermore, 'half' and 'step' relationships are considered to be full relationships.

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(65) [1966] A.L.R. 449

(66) ROYAL COMMISSION ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY (U.K.) Cmnd. 7054-I, para.398, March 1978 (HMSO, London).

A former wife, divorced at the time of the death of the injured, does not have a cause of action (68), and in England, section 4 of the Law Reform (Miscellaneous Provisions) Act 1971 provides that in assessing damages for lost dependency no account should be taken of a widow's remarriage or prospect of remarriage (69). The aim of this legislation was to counter criticisms that the assessment of a widow's marriage prospects was distressing for her and distasteful for the judge and although it was recognized that ignoring such prospects could sometimes result in some over compensation as the widow could be supported both by the defendant and by her new husband, the legislation was introduced.

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(67) for example, The Fatal Accidents Act, RSA 1970, c.138, in Alberta.

(68) see Payne-Collins v. Taylor Woodrow Construction Ltd. [1975] 1 All E.R. 898. The ROYAL COMMISSION ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY (U.K.) Cmnd. 7054-I at para. 417 recommended that in assessing damages for lost dependency, the possibility of divorce between a widow or widower and the deceased if he or she had lived should be disregarded, if taking the possibility into account would be to the detriment of the plaintiff.

The only calls for change to the Fatal Accidents legislation relate to the addition of common law husbands and wives to the list of eligible relationships. There are, however, practical difficulties involved in making such a change. In particular, there is a reluctance in proposing changes in the law which would conflict with existing social security provisions. In England, for example, the social security system provides for a widows' benefit which is paid only to a person who was legally married to her husband at the time of his death. Furthermore, there is a difficulty in distinguishing between a transitory relationship of short duration in which the parties involved do not consider themselves "husband" and "wife", and a more stable common law relationship in which the parties are in effect husband and wife (70).

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(69) now contained in s.3(2) Fatal Accidents Act 1976.

(70) see ROYAL COMMISSION ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY (U.K.) Cmnd. 7054-I, para. 405, March 1978, (HMSO London).

Relatives claims for non-pecuniary loss

In England, relatives of the deceased have no direct claim to compensation for any non-pecuniary loss which they may suffer. As mentioned earlier, however, the conventional damage award made to the deceased's estate for his loss of expectation of life may sometimes serve as an indirect way of compensating their losses. The 1975 resolution of the Council of Europe on compensation for physical injury or death provides that compensation should cover the mental suffering of a spouse, child, parent or fiancee who has maintained 'close bonds of affection' with the victim up to the time of his death. A majority of the Royal Commission on Civil Liability and Compensation for Personal Injury recommended that in England, damages for loss of society should be recoverable only by a husband or wife for the death of the other, by a parent for the death of an unmarried minor child, and by an unmarried minor child for the death of a parent (71), and that damages for loss of society in England should be set at half the average annual industrial earnings (which in 1977 amounted to a final figure of £2,000) (72).

Claims on behalf of and against a deceased's estate

The recovery of damages by the estate or from the estate of a deceased person is governed in England by the Law Reform (Miscellaneous Provisions) Act 1934 which provides that, on the death of any person all causes of action subsisting against or vested in him should survive against or, as the case may be, for the benefit of his estate. At common law there was no right of action against the wrongdoer's estate.

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(71) Cmnd. 7054-I at para. 424

(72) IBID at para. 427.

(d) Loss of consortium and Loss of service

The common law action for loss of consortium ('per quod servitium amisit') is available in England and provides a limited remedy for a husband who is deprived of his wife's society. The common law action for loss of services is available to a parent who is deprived of a child's services, provided that the law regards the parent as entitled to the services, and to an employer who is deprived of the services of a menial servant. The remedies are available only if the victim is injured; they are not available if he is killed. In practice these remedies are of little importance today for they are based on an archaic idea that interference with a man's wife, child or servant constitutes an interference with his proprietary rights. Intra-family and employer-employee relationships have changed so much over the years that these remedies are generally considered anomalous in the twentieth century.

Although in England it has been recommended that the action for loss of consortium be abolished, this was coupled with the recommendatioon that where a woman is deprived of her capacity to render services to her family, that she be vested with the right to recover damages in her own right, in keeping with the modern view that the right should be in her and not her husband's hands.

The law recognizes few instances in which the parent is entitled as of right to the services of his child, and a "menial" servant is taken to mean one who is living as part of his master's household, so that the action for loss of services is of little importance today (73).

2. The assessment of tort damages

(a) Pecuniary loss

Past pecuniary loss is calculated by taking into account the plaintiff's loss of income in the period between the date of injury and the date of the award, which is calculated by taking the hypothetical income (net of tax and social security contributions) which he would have received, and by deducting the net income actually received by him (including earnings, sick pay, and relevant welfare benefits). Any damages for expenses claimed by the plaintiff are additional to the loss of income and the aggregate of these sums constitutes the amount of damages for past pecuniary loss.

The calculation of damages for future pecuniary loss involves a more complex process. It involves, firstly, the assessment of the plaintiff's net annual loss, and this is equal to the annual value of his lost earnings net of tax and social security contributions. Added to this is the annual cost of any additional expenses which arise as a result of the injury, less the annual value of relevant social security benefits. In case of death, the net annual loss broadly corresponds to the amount which the deceased would have spent or applied for the benefit of his dependants, less the annual value of relevant social security benefits. The figures needed to calculate the net annual loss are usually taken to be those obtained while calculating damages for past pecuniary loss.

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(73) ROYAL COMMISSION ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY (U.K.) Cmnd. 7054-I, para. 447. March 1978 (HMSO, London).

Under present English law, adjustments to the net annual loss may be made for proved prospects of changes in the plaintiff's position. These sometimes include hypothetical changes which might have occurred if he had not been injured, such as promotion, and changes which probably will occur in the period following injury due to, for example, retraining.

In England, the Royal Commission on Civil Liability and Compensation for Personal Injury considered methods of calculating damages. It recommended that new procedures be established in calculating net annual loss (74). Numerical examples were provided in order to illustrate how the proposals which had been put forward by the majority of the Commission, would operate in practice (75). Minority opinions of calculating damages in respect of pecuniary losses were also expressed (76).

(b) Non-pecuniary loss

The level of damages awarded in respect of non-pecuniary loss is dependent upon the judge's assessment of what is reasonable. At present, no account is taken of social security benefits received nor of tax paid by the recipients of compensation. Here again, the Royal Commission advanced some proposals (77) and some minority views were expressed (78).

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(74) IBID, paragraphs 636-642.

(75) IBID, paragraphs 692-700.

(76) IBID, paragraphs 709-725.

(77) IBID, paragraphs 688-691.

(78) IBID, paragraph 726.

3. The form of damages

The question of the form in which damages should be paid has been the subject of extensive public debate. More particularly, the debate centres over whether damages should be paid, as under the tort compensation system, in the form of a lump sum award, or whether they should be paid in the form of periodic payments.

(a) Pecuniary loss

Nearly 20% of all tort compensation is paid out in respect of future pecuniary loss. Those in favour of periodic payments argue that the main component of a claim for future pecuniary loss is, almost invariably, loss of income or, in fatal cases, lost dependency. They argue that the plaintiff's loss is, therefore, in periodic form, whether it is made up of weekly wages, a monthly salary, or regular contributions to a family budget. Expenses also tend to be regular ones, and with these considerations taken into account, it is argued that the lump sum is not the most natural form of compensation, especially in view of the fact that the aim of tort compensation is to restore the plaintiff as closely as possible to his pre-accident position.

The lump sum payment is the only form of compensation available in tort and when the court assesses periodic future loss, it translates this into a capital sum.

Perhaps the greatest concern over lump sum awards, is that the court must make an attempt to foresee uncertain long-term developments both in the plaintiff's personal circumstances and in general economic trends. In essence, the court is required to make an educated guess as to such factors. Guided by medical evidence the court is required to allow for the likely duration of incapacity. It is required to compare the plaintiff's expected income with the income that he might have enjoyed but for his injury. It must consider his changes of promotion at work and his likely salary increases or decreases. The court must also make assumptions about future economic conditions such as rates of inflation, tax, and return on invested capital. The court reflects its assessment of the above factors in the size of the lump sum which it awards a successful plaintiff but if it turns out that the court's assessment was wrong in some respect or another, the plaintiff is either over compensated or under compensated. The plaintiff may, for example, end up living for a shorter or longer period than the court predicted he would; his medical condition may change unexpectedly or he may be unable to get the court-estimated return on his invested lump sum award.

There are, however, some advantages to the lump sum award of compensation. The first is the finality of litigation: the lump sum completely disposes of a tort claim. From the point of view of the defendant (and his insurer) this is beneficial as they no longer have any responsibility towards the plaintiff once damages have been paid. From the point of view of the plaintiff, he has the freedom to re-organize his life style in light of his injuries and has the financial means with which to accomplish this. There is some evidence that because of the often felt desire of litigants to dispose of their claims swiftly, lump sum settlements are promoted. This in turn helps to contain the cost of the tort system.

The lump sum does give the plaintiff freedom of choice. He must decide whether to invest his award in, for example, a house, whether perhaps to buy a business or whether simply to purchase some luxury item which he could not otherwise afford but which will bring him pleasure which to an extent makes up for his loss.

(b) Non-pecuniary loss

Lump sum damage awards in respect of non-pecuniary loss are an arbitrary acknowledgment of an unquantifiable loss and there is less difficulty in awarding lump sum payments in respect of such losses, as they are not intended to provide financial support for the future. Future changes in circumstances are therefore irrelevant.

(c) The allocation of lump sum awards

The Royal Commission on Civil Liability and Compensation for Personal Injury conducted a survey as to how compensation was used by successful plaintiffs (79). The sample was of recipients of small amounts of tort compensation and it was discovered that most people spent their money on current expenses or on a holiday or other luxuries. As TABLE II below shows, very few invested any part of their compensation awards.

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(79) (U.K.) Cmnd. 7054-II para 404.

TABLE II

USE MADE OF LUMP SUM AWARDS[1]

Great Britain	Percentages	
	Injuries in 1973	Injuries in 1966-72
Replacement of damaged property	13.9	6.5
Payment of debts/general living expenses	51.5	37.3
Luxuries/having a holiday	32.7	39.0
Investing some/all	5.0	9.3
Banking some/all	11.9	13.1
Other uses:		4.0
Paying off part/all of mortgage		
Remainder	5.0	6.8

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[1] Reported by those who had already spent or decided how to spend their money

(Source: REPORT OF THE ROYAL COMMISSION ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY, (U.K.) Cmnd. 7054-II page 125).

Some analagous research has been conducted into ways in which lump sums won on the football pools in England are used. The Smith and Razzell survey (80) covered amounts which are very much larger than in the survey carried out by the Royal Commission which was referred to above. In the Smith and Razzell survey it was found that over three quarters of the sample of 89 winners invested half or more of their winnings, although most of them also purchased a house and gave some part of the money to relatives. Once again, cars, holidays, consumer goods and luxuries featured largely in the spending.

(d) Reform proposals in England

It is not practical to make use of periodic payment awards in cases where the damages are small and in such cases it is in everyone's interest to dispose of the claim speedily.

A system of periodic payments requires more elaborate and expensive administration than is required under the tort compensaton lump sum award system. Such additional expense and administration may, however, be justified in view of the arbitrary way in which lump sum awards are necessarily calculated. In England, it has been recommended that provision should be made for damages in the form of periodic payments for future pecuniary loss caused by death or serious and lasting injury (81) and that the court should be obliged to award damages for future pecuniary loss caused by death or serious and lasting injury in the form of periodic payments, unless it is satisfied, on the application of the plaintiff, that a lump sum award would be more appropriate (82). It was also recommended that the court should have a discretion to award damages in the form of periodic payments for future pecuniary loss caused by injuries which are not serious and lasting (83). Furthermore, it was recommended that the parties in a claim for future pecuniary loss caused by death or serious and lasting injury should remain free to negotiate a settlement for damages in the form either of a lump sum or of periodic payments but that the plaintiff's professional adviser should be under a duty to point out the advantages of periodic payments and the normal court practice in such cases (84).

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(80) P.H.N. SMITH and P.E. RAZZELL: "The Pools Winners" Caliban Books, London 1975.

(81) ROYAL COMMISSION ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY (U.K.) Cmnd. 7054-I, para, 573, March 1978, (HMSO, London).

C. TORT LAW AND INSURANCE

It is the alliance between tort law and compulsory motor insurance which makes the tort compensation system workable in compensating victims of personal injury and death sustained as a result of the use of a motor vehicle. Tort law is not and was never designed to be a compensator: claims are adjudicated according to the principles of the law of tort, and where the plaintiff is able to establish the negligence of the defendant according to those principles, the court decrees that it recognizes the validity of his claim and that it gives him the right in law to have it met by the defendant. While tort adjudicates, it is the defendant, or more commonly his insurer, who provides the actual compensation.

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(82) IBID, para. 576.

(83) IBID, para. 580.

(84) IBID, para. 578.

1. Compulsory motor insurance

Recent tort compensation awards have been so high that they undoubtedly surpass the means of the average defendant (85). The purpose of compulsory insurance is to ensure that there is at least some degree of financial responsibility on the part of motorists.

In England, by virtue of s. 143 of the Road Traffic Act 1972, it is unlawful for a person to use or to cause or permit any other person to use a motor vehicle on a road, unless there is in force, in relation to the use of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such security as complies with Part VI of the 1972 Act and a contravention of this section is a criminal offence (86).

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(85) In the English case of Lim v. Camden and Islington Area Health Authority ("The Times": December 8, 1977) damages of approximately £243,000 were awarded to a plaintiff in respect of personal injury arising out of a motor vehicle accident; in the recent Canadian case of Andrews v. Grand & Toy (Alberta) Ltd. (1978), 3 CCLT 225, 83 D.L.R. (3ed) 452 (SCC), the Alberta Supreme Court, Trial Division awarded the plaintiff damages of C$1,022,477.48 and although the Appellate Division reduced his damages and although further adjustments were made when the case went on appeal to the Supreme Court of Canada, the final total damage award stood at C$817,344. Accounting for contributory negligence, judgment was entered for C$613,008. In the case of Thornton v. Board of School Trustees of School District No.57 (1978), 3 CCLT 257, 83 D.L.R.(3ed) 480 (SCC) the total damage award came to C$859,628.

By section 144 of the Road Traffic Act 1972, users of motor vehicles are not required to be insured or secured against third party risk if the person concerned has deposited and keeps deposited with the Accountant General of the Supreme Court the sum of 15,000 at a time when the vehicle is being driven under the owner's control. The sum is that which was originally mentioned in the first U.K. Road Traffic Act in 1930 and it is obviously too low to ensure the payment of compensation for serious road traffic injury. It has been recommended that the deposit alternative to compulsory third party insurance for motor vehicles provided for by this section be abolished (87).

Section 145 of the Act sets out the requirements which a policy of insurance must satisfy. Firstly, it must be issued by an authorized insurer, that is, a person or body of persons carrying on the motor vehicle insurance business in Great Britain, and such a person or body of persons is required to be a member of the Motor Insurers' Bureau (the "M.I.B.").

It is a requirement of s.145 that the policy insure such person, persons, or classes of persons as may be specified in it in respect of any liability which may be incurred by him or them for death or bodily injury to any person caused by or arising out of the use of a vehicle on a road. It must also indemnify the insured against any liability under s. 155 of the Act to pay for emergency medical treatment. These constitute the minimum statutory requirements. In practice, almost every motor insurance policy also covers third party claims for property damage and injury or damage sustained on private property. About 70% of private motorists hold comprehensive policies, which, in addition, provide cover for damage to their own vehicles and occasionally a limited amount of first party insurance coverage in respect of personal injuries to themselves.

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(86) In Alberta, being the registered owner of an uninsured motor vehicle or operating an uninsured motor vehicle is an offence pursuant to s.71(2) and s.71(3) of The Motor Vehicle Administration Act, S.A. 1975, c.68.

(87) ROYAL COMMISSION ON CIVIL LIABILITY AND COMPENSATION FOR PERSONAL INJURY (U.K.) Cmnd. 7054-I, para 1080, March 1978, (HMSO, London).

Section 149 of the Road Traffic Act 1972 is concerned with the duty of insurers to satisfy judgments secured against insured persons. It provides that if after a certificate of insurance or of security has been delivered, judgment in respect of a compulsory insurable liability is obtained against any person who is insured by the policy or whose liability is covered by the security, then the insurer must, notwithstanding that he may be entitled to avoid or cancel the policy or security, pay to the person entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, together with costs and interest (88).

2. Uninsured and unidentified motorists

In 1946, virtually every insurer transacting motor insurance business made an agreement with the Government thereby creating the Motor Insurers' Bureau. The bureau is a company limited by guarantee and financed by a levy on member companies in proportion to their motor premium income. It has a legally binding agreement with the Government to satisfy judgments in respect of claims within the scope of the Road Traffic Acts, where the plaintiff has been unable to recover the damages awarded. The victims of 'hit and run' drivers who could not be identified were outside the scope of this agreement, since, having no defendant, they could not obtain a judgment. In 1968, however, they were specifically provided for within the M.I.B. scheme, so that any person injured by a motor vehicle in the United Kingdom is assured of receiving any compensation due, either from the defendant, his insurer, or the Motor Insurers' Bureau (89). The payment by the M.I.B. or by any insurer concerned does not relieve the motorist of his prime liability, for the M.I.B. or insurer concerned has a right of recovery against the negligent motorist personally. In practice, this right is of little value because if the motorist cannot be identified, he obviously cannot be compelled to pay, and if he can be identified, he is commonly a 'man of straw'.

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(88) See Hardy v. M.I.B. [1964] 2 All E.R. 742.

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(89) In Alberta, The Motor Vehicle Accident Claims Act, RSA 1970, provides for a similar arrangement.

CHAPTER THREE

THE PURE 'NO-FAULT' SYSTEM

CHAPTER THREE - THE PURE 'NO-FAULT' SYSTEM.

The serious shortcomings of the tort compensation system have given rise to many challenges to the concept that fault should be the principal basis upon which compensation is awarded for personal injury arising out of a motor vehicle accident (1). In many jurisdictions and countries in the common law world, law reforms have transpired under which the tort compensation system has been partially replaced by no-fault schemes and two such schemes operating in Canada, namely those of British Columbia and Saskatchewan are examined in the next chapter.

By far the most radical and ambitious reform of tort law, however, occurred in New Zealand with the implementation of the Accident Compensation Act 1972 ("A.C.A") on April 1, 1974. This Act gave effect to the first comprehensive scheme of pure no-fault compensation for accidental loss or injury in the world and abolished the common law action for damages in respect of personal injury or death arising from motor vehicle accidents.

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(1) see: ATIYAH: "Accidents, Compensation and the Law" 1970); ISON: "The Forensic Lottery" (1967); KEETON and O'CONNELL: "Basic Protection for the Traffic Victim" (1965); CONARD: "Automobile Accident Costs and Payments" (1964); LINDEN: "Report of the Osgoode Hall Study on Compensation for Victims of Automobile Accidents (1965); O'CONNELL: "The Lawsuit Lottery" (1979); and also: McRUER: "The Motor Car and the Law" (1966) 4 Osgoode Hall L.J. 54; GIBSON: "Non-Fault Automobile Insurance" (1968) 11 Can. Bar J. 172; LINDEN: "Peaceful Coexistence and Automobile Accident Compensation" (1966) 9 Can Bar J. 5; ATKEY: "Perspectives for Non-Fault Automobile Accident Compensation in Ontario" (1966) 5 Western L. Rev. 1; ISON: "Highway Accidents and the Demise of Tort Liability" (1969) 47 Can. Bar Rev. 304; DUNLOP: "Non-Fault Automobile Insurance and the Negligence Action: An Expensive Anomaly" (1975) 13 Osgoode Hall L.J. 439.

In so doing, the Act dealt "a mortal blow to the traditional tort system of compensating the victims of accidental injury." (2). This chapter seeks to examine the events leading up to the implementation of the New Zealand scheme, its scope, opinions as to its success, some of its problem areas and finally some reforms presently being considered.

(A) CHANGING THE SYSTEM

The first unsuccessful attempt at introducing no-fault legislation in the field of motor insurance and compensation in New Zealand was made in 1937, when a draft Bill entitled "The Motor Vehicle Damage Act" was laid before the New Zealand Parliament. The Bill proposed to compensate victims of motor accidents on a no-fault basis except where there was an intention on the part of the victim to cause injury, or where the victim was a passenger in an unlawfully acquired car and had consented to the unlawful action, or where the victim was a willing passenger travelling with an intoxicated driver. The Bill was vigorously opposed by motoring organizations on the basis that the fault concept promoted personal responsibility and that the tort system gave motor vehicle accident victims full recovery rights for pain and suffering, and in light of this strong opposition, the Bill was dropped.

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(2) G.W.R. PALMER: "Compensation for Personal Injury: A Requiem for the Common Law in New Zealand" (1973) 21 Am. J. Comp. L. 1, at p.1.

It was not until 1962 that a new initiative was taken. In that year, the Minister of Justice appointed a Committee on Absolute Liability (3) to examine and report on the desirability of introducing some form of absolute liability for death or bodily injury arising out of the use of motor vehicles. The Committee's terms of reference also required it to examine and report on "the adequacy and justice of the present law and insurance practice and legal procedure, and such incidental matters as the Committee may think worthy of reporting" (4).

In its Report, published in July 1963, the Committee recognized that: "The common law right for damages for accidents on the roads as administered in New Zealand is open to serious criticism....." (5). The Committee further recognized that: "There is a case for an accident insurance scheme which would cover all persons who are injured in any way without negligence on their part, provided the community can afford to bear the cost on an equitable basis" (6). The majority, however, recommended that "it would be unwise to make fundamental changes in our present system until definite recommendations can be made that such a change will bring improvements" (7). The

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(3) COMMITTEE ON ABSOLUTE LIABILITY, Report, July 1963, Government Printer, Wellington, N.Z. - 1963.

(4) IBID. para. 1.

(5) IBID. para. 52.

(6) IBID. para. 40.

(7) IBID. para. 42.

No-fault provisions which complement the tort system, as is the case in Saskatchewan and British Columbia, have been shown to improve areas in which tort was weak. A limited no-fault scheme can be designed to deal with the smaller claims, and because there is no fault investigation involved, these can be dealt with more efficiently and speedily. Since compensation is payable in the form of periodic payments, it can be adjusted in accordance with any changes in the personal circumstances of the victim and in accordance with general economic trends. Tort is useful in that it is capable of assessing individual losses and in that it does foster individual responsibility. It should be employed to adjudicate the larger or more complex claims over and above certain threshold limits.

APPENDIX A1

Road deaths and death rates[1] : 1976

	Number of road deaths [1], [2]	Vehicles per 100 population[2]	Road deaths per 100,000 population[2]	Road deaths per 10,000 vehicles[2]	Car user deaths per 100 million car kilometres[2]	Pedestrian deaths per 100,000 population[2]
Great Britain	6,570	32	12	4	1	4
Belgium	2,488	37	25	7	4	6
Denmark	857	32[3]	17	5[3]	(1)	4
Federal Republic of Germany	14,820	36	24	7	3	6
France	13,577	45	28	6	4	5
Irish Republic	525	21	17	8	2	5
Italy	8,927	39	17	4	(3)	4
Luxembourg	100	40	28	7	..	5
Netherlands	2,432	41	18	4	2	3
Austria	1,903	34	28	8	5	7
Czechoslovakia	2,017	19[3]	18	9[3]	..	6
Finland	804	30	17	6	2	4
German Democratic Republic	2,324	35	16	4	..	4
Hungary	1,622	14	15	11	4	6
Norway	471	32	12	4	1	4
Poland	5,878	11[3]	17	16[3]	7	8
Portugal	2,594	14	35	25	..	(10)
Spain	4,759	21[3]	17	8[3]	7	5
Sweden	1,168	38[3]	14	4[3]	2	3
Switzerland	1,188	44	19	4	..	5
Yugoslavia	4,357	10	20	20	..	7
Australia	3,583	49	26	5	..	5
Canada	5,224	51	23	4	..	(5)
Japan	9,734	35	11	3	(2)	(4)
New Zealand	609	52	19	4	(2)	3
United States of America	45,422	(65)	21	(3)	2	3

[1] Most countries define a fatality as being due to a road accident if death occurs within 30 days of the accident. The official road accident statistics of some countries however, limit the fatalities to those occurring within shorter periods after the accident. While the numbers of deaths in the above table are as published by the countries concerned, the death rates have been adjusted (according to the conventions described below) to represent standardised 30-day death rates.

Country	Definition	Approximate correction required to standardise death rates
France	Within 6 days	Increased by 9 per cent
Italy	Within 7 days	Increased by 7 per cent
Austria	Within 3 days	Increased by 12 per cent
Czechoslovakia	Within 24 hours	Increased by 30 per cent
German Democratic Republic	Within 3 days	Increased by 12 per cent
Portugal	Within 24 hours	Increased by 30 per cent
Spain	Within 24 hours	Increased by 30 per cent
Japan	Within 24 hours	Increased by 30 per cent

[2] Figures in brackets are for 1975.

[3] Vehicle figures exclude mopeds.

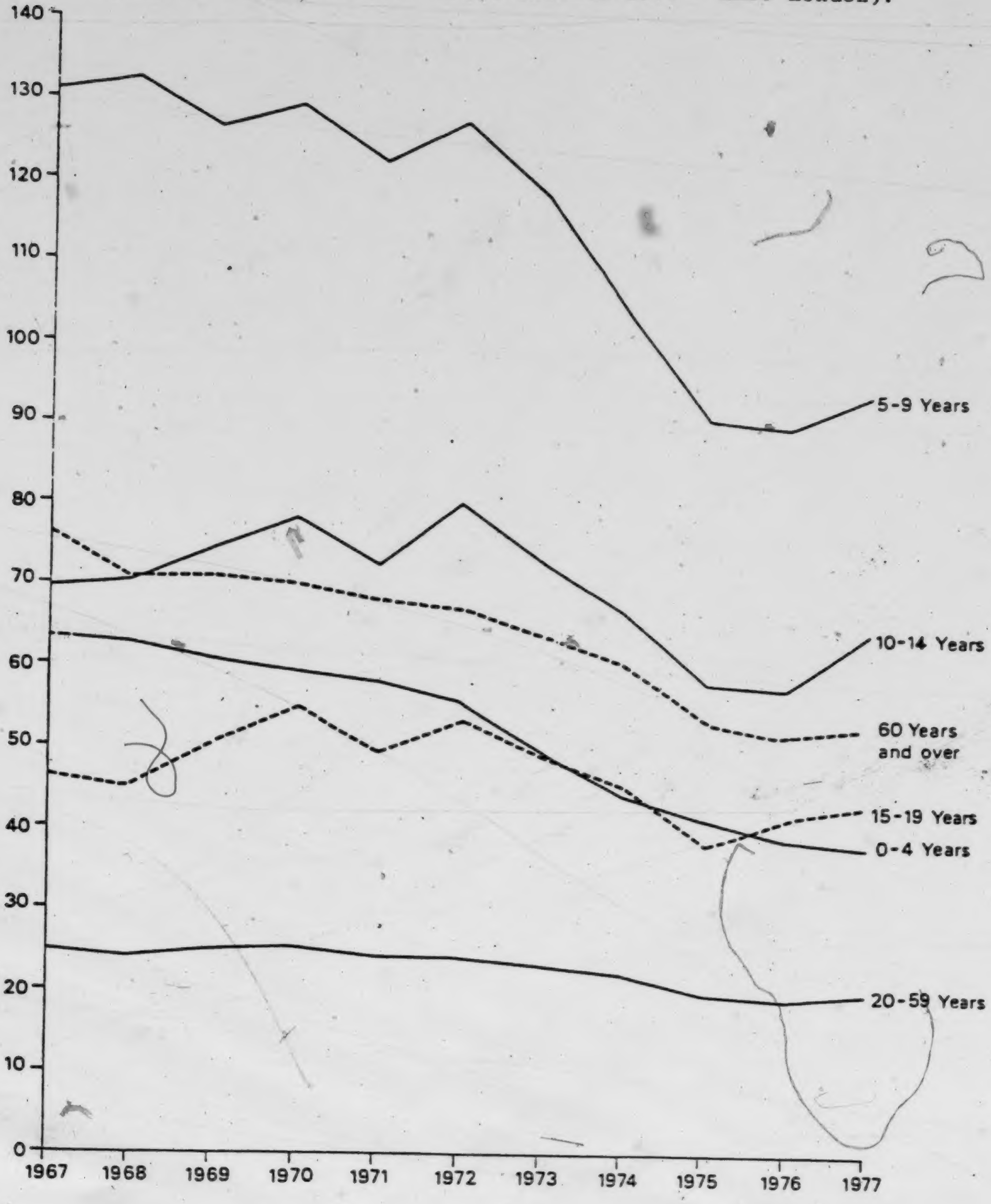
Sources: For countries other than Great Britain:
Statistics of Road Traffic Accidents in Europe 1976 (E.C.E.). – Economic Commission for Europe.
World Road Statistics (I.R.F.) 1977. – International Road Federation

(Source: Road Accidents Great Britain 1977 - HMSO London).

APPENDIX A2

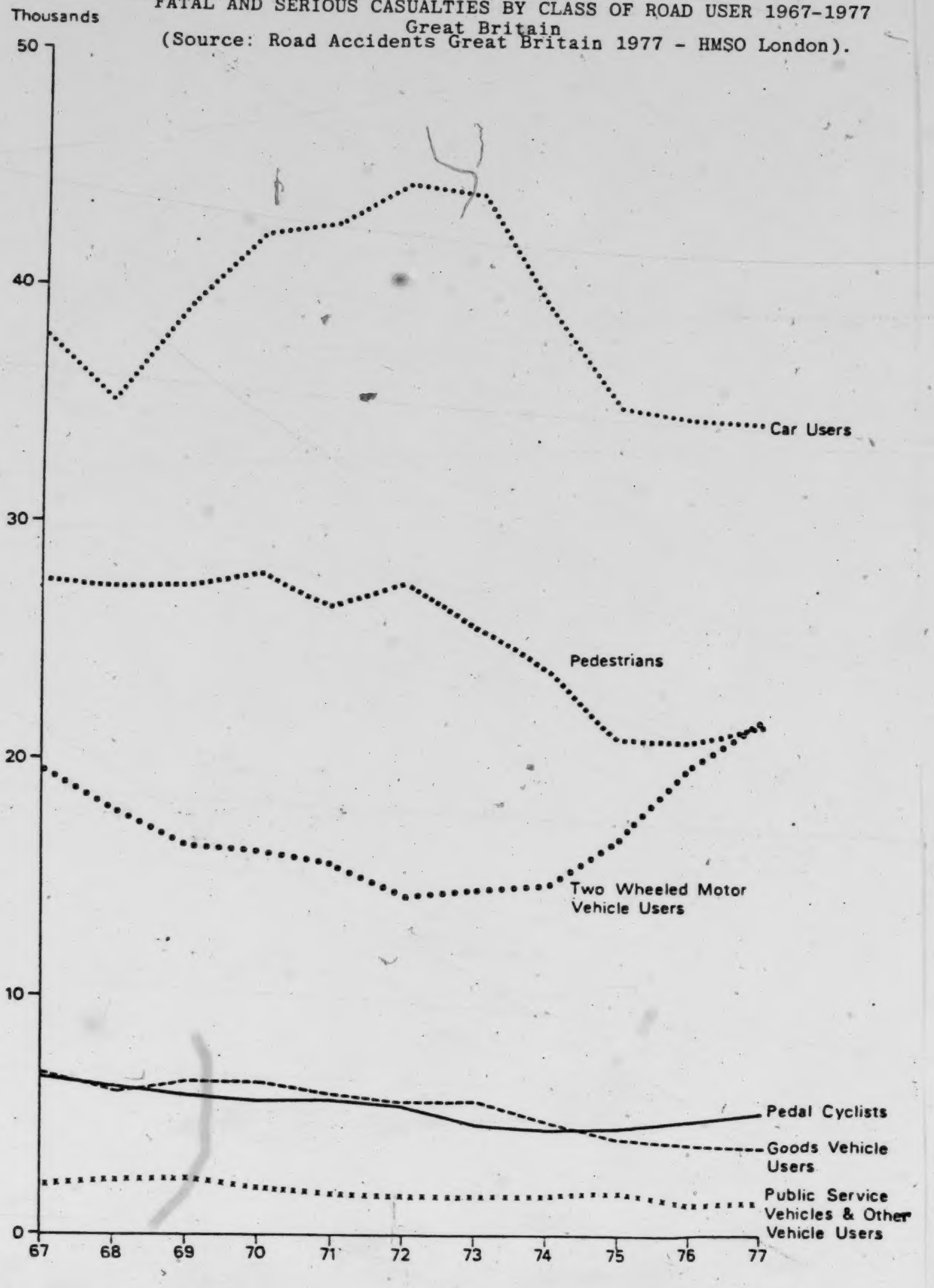
Pedestrians Killed or Seriously Injured per 100,000 Population, Great Britain 1967-1977

(Source: Road Accidents Great Britain 1977 - HMSO London).

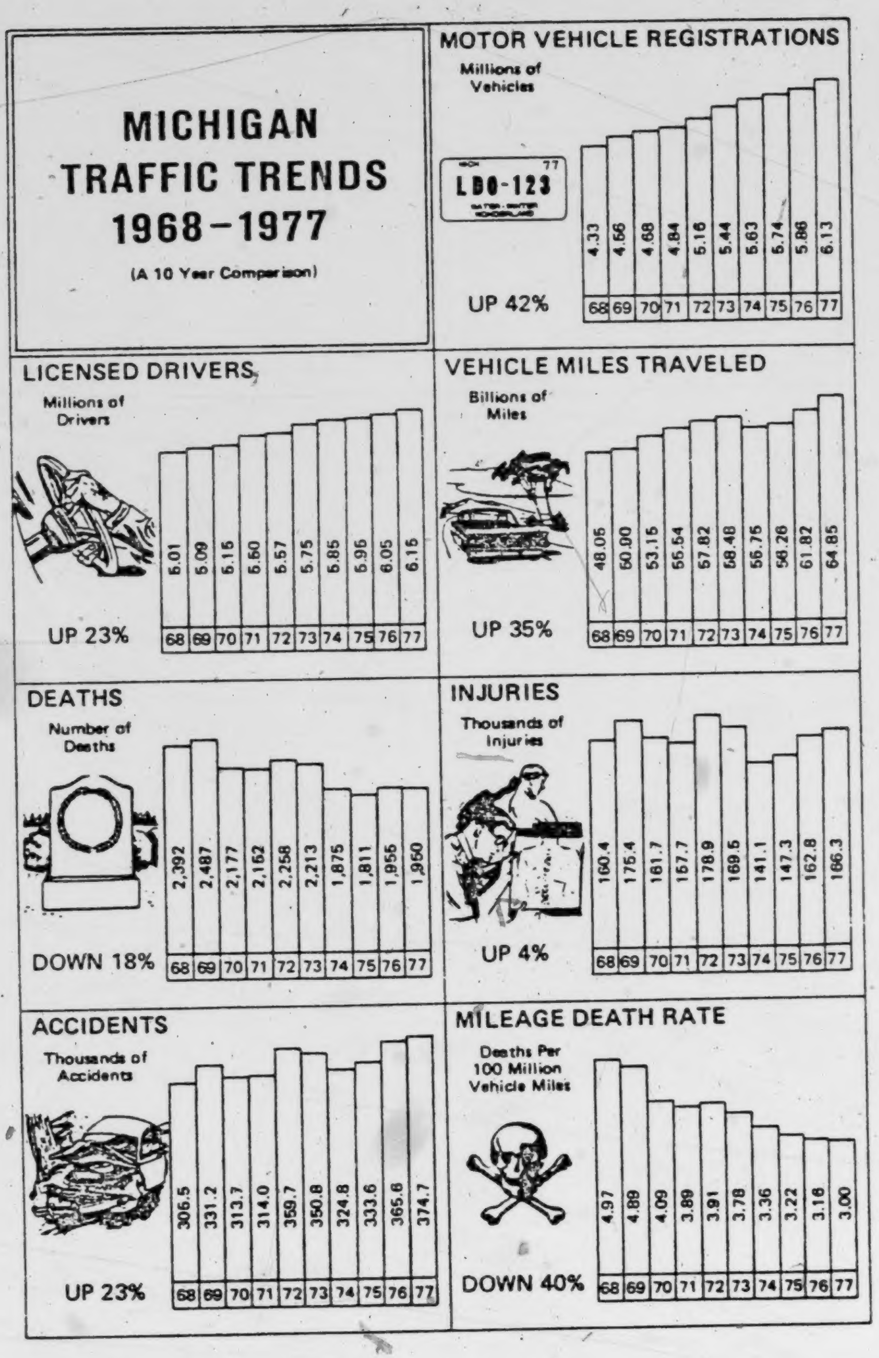


APPENDIX A3

FATAL AND SERIOUS CASUALTIES BY CLASS OF ROAD USER 1967-1977
Great Britain
(Source: Road Accidents Great Britain 1977 - HMSO London).



APPENDIX A4



MICHIGAN TRAFFIC TRENDS 1968–1977 (A 10 Year Comparison)

MOTOR VEHICLE REGISTRATIONS

LICENSED DRIVERS

VEHICLE MILES TRAVELED

DEATHS

INJURIES

ACCIDENTS

MILEAGE DEATH RATE

(Source: Michigan Traffic Accident Facts: 1977
Department of State Police publication).

APPENDIX A5

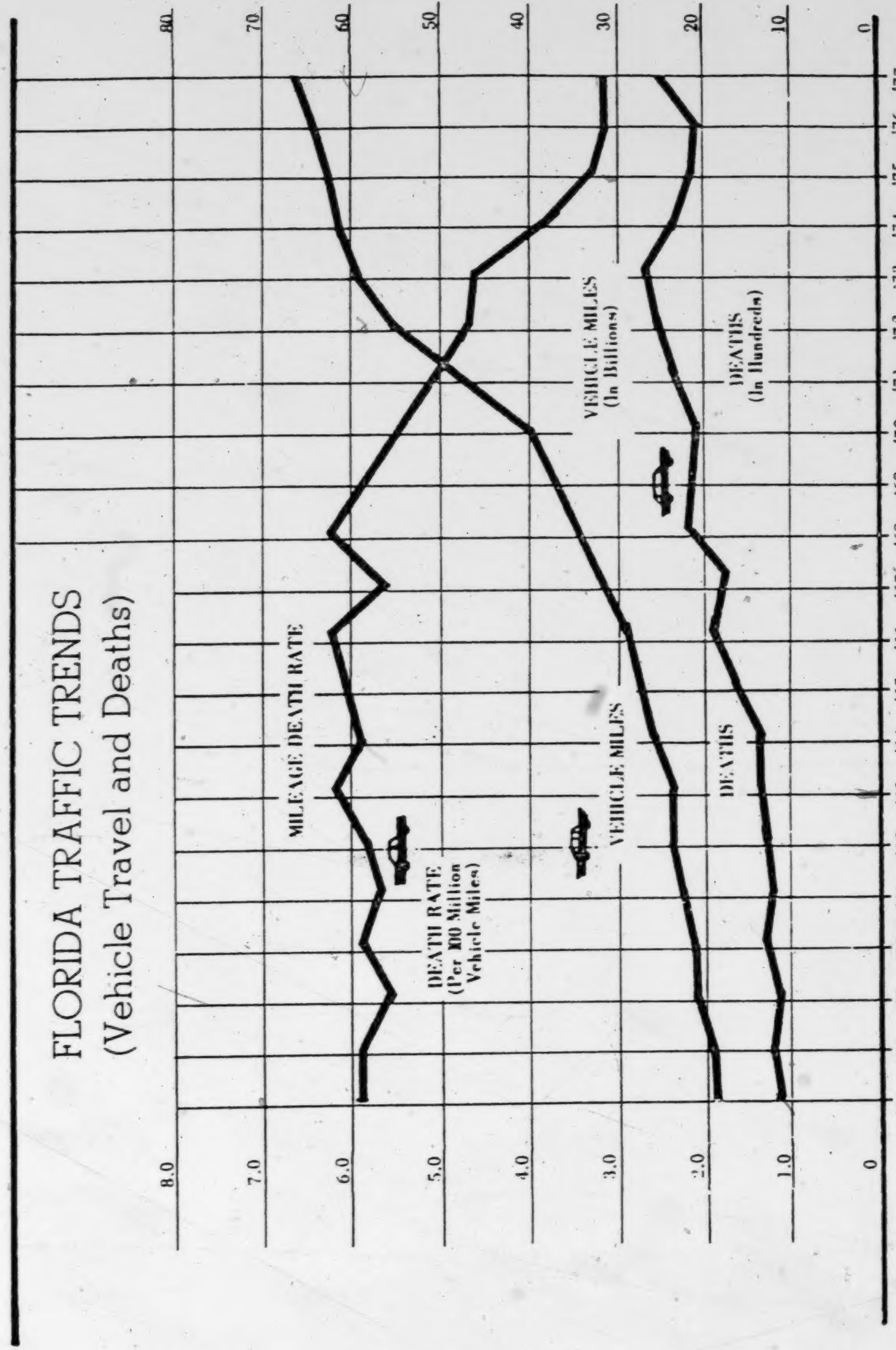
(Source: Florida Traffic Accidents 1977 - Department of Highway Safety and Motor Vehicles, Tallahassee, Fla.)

FLORIDA TRAFFIC STATISTICS

YEAR	LICENSED DRIVERS	REGISTERED VEHICLES	MILEAGE (MILLIONS)	ACCIDENTS	NONFATAL INJURIES	DEATHS	MILEAGE DEATH RATE
1958	2,383,689	2,346,775	19,105	100,497	33,587	1,140	5.9
1959	2,552,706	2,554,047	20,429	115,642	40,645	1,126	5.5
1960	2,710,665	2,717,121	21,171	124,630	44,433	1,245	5.9
1961	2,832,796	2,814,426	21,592	119,441	48,464	1,203	5.6
1962	2,819,537	2,987,891	22,903	131,925	64,777	1,344	5.8
1963	3,065,424	3,117,314	23,978	143,798	75,188	1,489	6.2
1964	3,223,371	3,293,637	26,283	161,515	86,180	1,545	5.9
1965	3,358,747	3,460,096	27,737	169,408	90,464	1,665	6.0
1966	3,512,853	3,695,502	29,239	186,900	101,608	1,819	6.2
1967	3,660,068	3,973,178	31,128	188,506	102,309	1,781	5.7
1968	3,745,365	4,238,928	33,981	205,012	112,182	2,109	6.2
1969	3,937,346	4,586,828	37,046	223,015	127,224	2,134	5.8
1970	4,143,442	4,730,034	39,992	238,740	137,081	2,170	5.4
1971	4,670,387	5,329,150	47,473	249,227	143,995	2,377	5.0
1972	5,023,876	5,734,430	54,589	272,479	146,859	2,507	4.6
1973	6,132,430	6,381,235	59,265	325,237	162,545	2,662	4.5
1974	6,296,550	6,750,609	61,397	283,438	145,247	2,270	3.7
1975	6,320,822	6,995,683	61,715	283,086	154,728	2,040	3.3
1976	6,384,149	7,217,926	64,492	270,659	152,375	2,015	3.1
1977	6,607,213	7,845,529	67,007	284,965	160,096	2,066	3.1

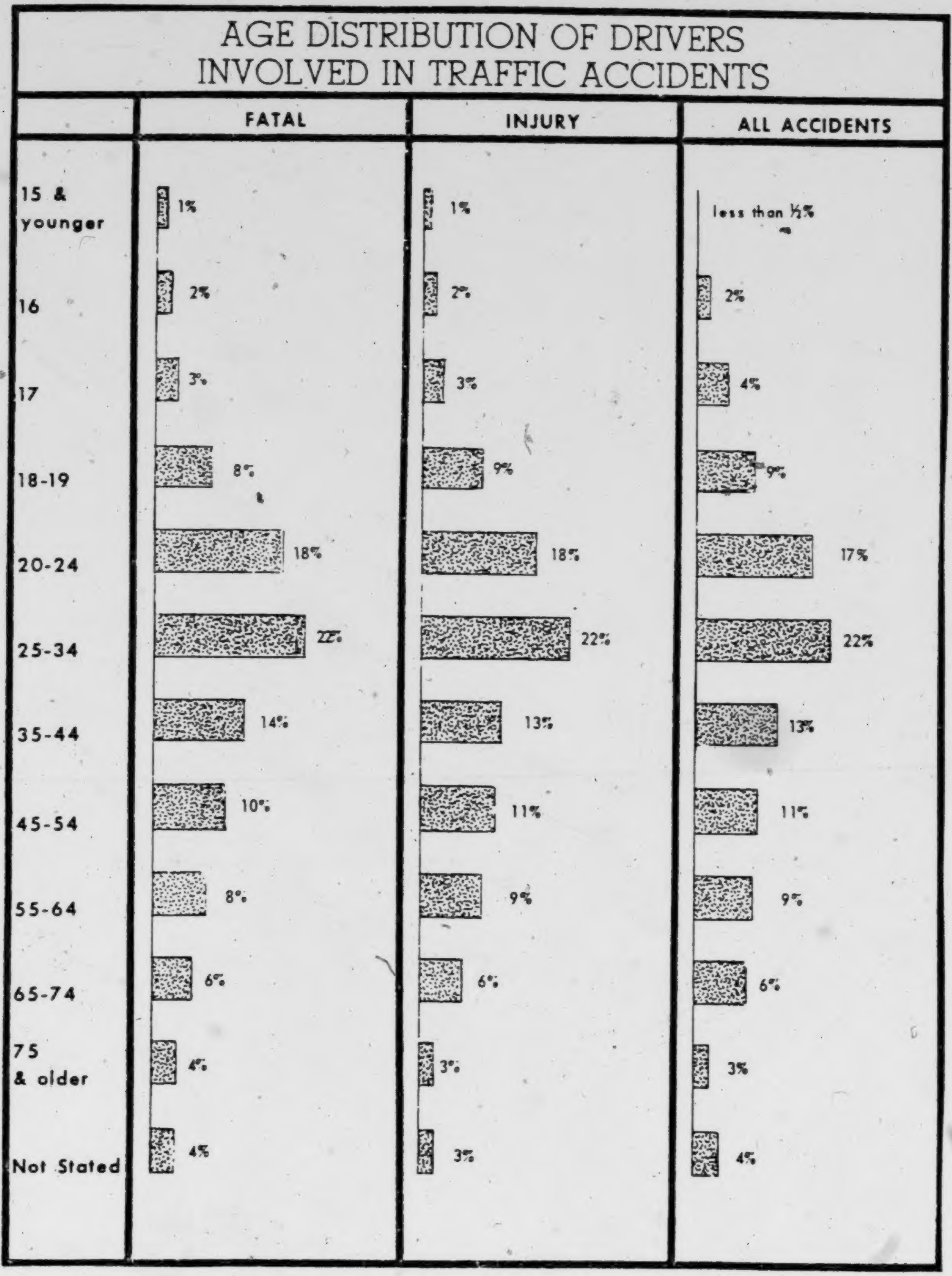
APPENDIX A6

FLORIDA TRAFFIC TRENDS
(Vehicle Travel and Deaths)



APPENDIX A7

(Source: Florida Traffic Accidents 1977 - Department of Highway Safety and Motor Vehicles, Tallahassee, Fla.)



APPENDIX B1

ACCIDENT COMPENSATION ACT

ACCIDENT COMPENSATION COMMISSION LEVIES ON MOTOR VEHICLES

PRESCRIBED BY SECTION 99

(As approved by Cabinet on 4 May 1978)

Type of Vehicle	New Rate	Old Rate	
Motor Cycles (engine capacity over 125 cc) including "Learner" motor cycles	- $25.00	$ 9.90	*
Motor Cycles (engine capacity 61-125 cc) including "Learner" motor cycles	- $15.00	$ 9.90	*
Motor Cycles (engine capacity 60 cc or less) including "Learner" motor cycles	- $ 5.00	$ 1.35	*
Power Cycles (i.e. vehicles fitted with pedals for alternative propulsion (including "Learner" power cycles	- $ 5.00	$ 1.35	*
Tractors	- $ 3.50	$ 2.00	*
Motorcars	- $14.20	$14.20	
Private Taxicabs	- $14.20	$14.20	
Trucks, Vans -	- $12.00	$14.20	⊕
Self-Propelled Caravans and Mobile Cranes	- $12.00	$14.20	⊕
Fork-lift Vehicles carrying goods on road	- $12.00	$14.20	⊕
Motor Vehicles (other than those in classes 7,8, or 9 below) designed to carry more than 9 persons	- $12.00	$14.20	⊕
Public Taxicabs	- $50.00	$57.50	⊕
Public Omnibuses			
Passenger seats - Up to 29 (driver's seat excluded)	- $82.50	$82.50	
Passenger seats - Over 29 (driver's seat excluded)	- $86.25	$86.25	

* Increase
⊕ Decrease

Type of Vehicle	New Rate	Old Rate
Service Coaches		
Passenger seats - Up to 9 (driver's seat excluded)	- $32.30	$32.30
Passenger seats - 10 - 19 (driver's seat excluded)	- $57.50	$57.50
Passenger seats - Over 19 (driver's seat excluded)	- $77.25	$77.25
Contract Motor Vehicles		
Passenger seats - Up to 9 (driver's seat excluded)	- $10.75	$10.75
Passenger seats - Over 9 (driver's seat excluded)	- $14.40	$14.40
Trailers - (including trailer caravans)		
Gross laden weight, 2,000kg or less	- No Charge	$ 0.70 ⊕
Gross laden weight, over 2,000kg	- No Charge	$ 0.70 ⊕
Rental Cars	- $62.85	$62.85
Miscellaneous Vehicles		
Ambulances	- $12.00	$21.50 ⊕
Fire Brigade vehicles of any class except trailers, motor cycles and power cycles	- $12.00	$21.50 ⊕
Hearses – Gross laden weight 2,000 kg or less	- $12.00	$21.50 ⊕
Hearses – Gross laden weight over 2,000 kg	- $12.00	$21.50 ⊕
Trade Plates		
For motor cycles (engine capacity over 60 cc)	- $ 9.90	$ 9.90
For power cycles and motor cycles (engine capacity 60 cc or less)	- $ 1.35	$ 1.35
For trailers	- No Charge	$ 0.70 ⊕
For vehicles other than motor cycles, power cycles or trailers	- $14.20	$14.20

* Increase
⊕ Decrease

Type of Vehicle	New Rate	Old Rate	
Farm Vehicles (only those which qualify for special exemption from motor taxation)			
Class B farm tractors	- $ 3.50	$ 2.00	*
Class B farm trucks	- $ 2.00	$ 2.00	
Class B farm motor cycles (engine capacity over 60 cc)	- $10.00	$ 2.00	*
Class B farm motor cycles (engine capacity 60 cc or less)	- $ 3.50	$ 1.35	*
Class B farm power cycles (i.e. vehicles fitted with pedals for alternative propulsion)	- $ 3.50	$ 1.35	*
Class B self-propelled agricultural machines	- $ 2.00	$ 2.00	
Class A farm trailers (i.e. trailers drawn by Class B farm vehicles)	- No Charge	$ 0.70	⊕

* Increase

⊕ Decrease

APPENDIX B2

Accident Compensation Commission

MOTOR VEHICLE COMPENSATION FUND

Statement for the Year Ended 31 March 1979

	1979			1978		
	For Current Year $	*For Prior Years* $	*Total* $	*For Current Year* $	*For Prior Years* $	*Total* $
Income—						
Gross levy revenue	22,986,422		22,986,422	22,248,201		22,248,201
Investment income	1,252,733	5,992,689	7,245,422	1,197,634	4,915,862	6,113,496
Total income	24,239,155	5,992,689	30,231,844	23,445,835	4,915,862	28,361,697
Expenditure—						
Earnings related compensation or loss of potential earnings payable to injured persons	2,986,510	2,926,764	5,913,274	2,999,317	2,241,526	5,240,843
Earnings related compensation or remarriage grants payable to dependants	240,468	1,962,598	2,203,066	291,297	1,433,087	1,724,384
Funeral expenses and dependants allowance	501,771	93,196	594,967	510,867	173,773	684,640
Non-economic loss	145,837	3,832,722	3,978,559	269,341	3,629,750	3,899,091
Medical treatment	704,116	169,046	873,162	519,859	127,191	647,050
Hospital treatment	158,103	190,159	348,262	81,781	116,237	198,018
Dental treatment	109,385	94,858	204,243	142,535	70,728	213,263
Conveyance for medical attention	572,485	39,145	611,630	162,418	11,106	173,524
Rehabilitation—aids, training, and grants	6,135	84,199	90,334	6,448	87,465	93,913
Other expenditure	257,430	214,200	471,630	218,362	165,145	383,507
Total compensation and medical expenditure	5,682,240	9,606,887	15,289,127	5,202,225	8,056,008	13,258,233
Revenue collecting agency fee	883,700		883,700	1,024,161		1,024,161
General Fund transfer	2,293,614	610,162	2,903,776	1,828,420	492,661	2,321,081
Total expenditure	8,859,554	10,217,049	$19,076,603	8,054,806	8,348,669	$16,603,475
Addition or (Reduction)	$15,379,601	($4,244,360)		$15,391,029	($3,632,807)	
Fund balance—						
Balance of fund—1 April		61,387,981			49,612,491	
Reduction for prior years		4,224,360			3,632,807	
		57,163,621			45,979,684	
Addition for current year		15,379,601			15,391,029	
Past year adjustments		55,884			17,268	
Balance of fund—31 March		$72,599,106			$61,387,981	

(Source: Report of the Accident Compensation Commission for the year ending March 31, 1979).

APPENDIX B3

Accident Compensation Appeal Authority

ACCIDENT COMPENSATION APPEAL AUTHORITY

SUMMARY OF UNREPORTED DECISIONS

Compensation for non-economic loss – Accident Compensation Act 1972, s 120.

Left hand injured – Loss of full finger palm grip – Appellant a man aged 24 years with a wide range of interests – A guitar player of distinction – Also engaged in sports including martial sports – Guitar playing significantly affected – Some handicap in fighting – $800 awarded for loss of amenities. Re Saunders: Decision No 32.

Left hand injured – Partial Loss of strength and of fine movements – Appellant in managerial position – Award of $450 confirmed. Re O'Connor: Decision No 33.

Left leg seriously injured – Appellant a woman aged 66 years – Difficulty negotiating steps – Unable to work in garden – Degree of pain during hospitalisation but now largely gone – Award of $750 confirmed. Re Ranginui: Decision No 34.

Knee injury – Partial tear to medial ligament on inner aspect of left knee – No instability of joint – Permanent partial incapacity assessed at 3.75-7.5 percent – Second injury which did not worsen position but delayed recovery – Appellant an enthusiastic fencer – Knee joint important to sport – Award of $290 confirmed in respect of first accident – No award for second accident. Re Watson: Decision No 36.

Neck – Whiplash injury – Neurasthenia – Accelerated latent symptoms of soreness, sickness and grating in neck that appellant was likely to suffer anyway – Appellant a miner aged 61 years – Deterioration in domestic and social life since accident – Unable to enjoy surf fishing, bowls and gardening – These results likely to occur in any event – Moderate award of $500 justified. Re Foster-Lynam: Decision No 45.

Cheek cut – Nerve injury – Medical opinion differing on degree of pain – Appellant a miner aged 63 years – Complaints of facial pain, headache, nervous symptoms, poor sleep and lapses of memory – Capable of resuming employment but in view of discomfort and age unreasonable to expect him to – Award of $2,250 confirmed. Re Jellyman: Decision No 46.

Eye – Loss of right eye – Appellant a welder aged 28 years – Appellant had been deserted by wife and had custody of three children – Conscious that physical condition not completely normal which caused awkwardness in relations with women and with his children – Anxiety regarding job arising from loss of stereoscopic vision and fear of "arc flash" – Ability to engage in sport limited – $3,500 awarded. Re Stewart: Decision No 47.

Shoulder dislocation – Probable tendon damage – Likelihood of some permanent limitation – Appellant a miner aged 57 years – Injury involving change from high status employment of shiftman to bathroom attendant – Recreations of bowls and crayfishing affected – Loss of job satisfaction – $900 awarded. Re Muncaster: Decision No 49.

Leg – Injured leg now slightly shorter than other – Wears built-up shoe and walks with a limp – Good adjustment to fairly minor disability – Award of $1,240 confirmed. Re Thompson: Decision No 52.

Concussion – Facial lacerations, bruising – No physical disabilities (except scars) – Complaints of vagueness, loss of concentration, lifelessness felt to be due to depressive illness as consequence of accident and likely to settle with time – Award of $1,400 confirmed this reflecting some disfigurement (two scars above eyes) and degree of nervous depression attributed to accident. Re Druiff: Decision No 56.

Eye – Loss of use of right eye – Possibility of future removal of right eye – Appellant a waterside worker aged 59 years – Sporting interests affected by inability to judge distance – Problems with ladders and dust in job – Difficulties with reading, watching television and domestic tasks – Difficulty with good eye in bright sunshine, inclined to smart and water – Bad eye under constant medication – $3,000 awarded. Re Flattery: Decision No 62.

Foot – Fracture to main bone forming component of ankle joint – Probable arthritic changes in future and reconstructive surgery in, form of bone graft could be necessary – Semi-lameness affecting work and social activities – Appellant aged 28 years – $3,000 awarded. Re Scanlan: Decision No 65.

Finger – Amputation of right little finger – 15 year old boy – Slight effect on grip – Slight effect on tennis prowess and writing – No problem from cosmetic viewpoint – Award of $300 confirmed. Re Pearce: Decision No 71.

Finger – Amputation of right little finger tip and loss of pulp tissue from end of finger – Healed well – Little cosmetic blemish – No evidence of loss of amenities or enjoyment of life – Award of $150 confirmed. Re Kitchen: Decision No 82.

Assault – Severe injury to head and face from assault at night – 53 year old man – Left with fear of further attacks and a feeling of general anxiety that has affected his well-being – Fear having persisted for three years – The evidence supported the genuineness of the claim and the appellant's integrity – $1,000 awarded. Re Frankel: Decision No 68.

APPENDIX C1

COMPARISON OF NO-FAULT ACCIDENT BENEFITS PLANS

AS OF JANUARY 1980

	Manitoba (as of March 1, 1980)	Saskatchewan	British Columbia	Quebec	Ontario
Total Disability	$120/week minimum or 70% of gross earnings to a maximum of $270/week	$60/week	$100/week	90% of net income to $20,000 max. net income Minimum $87.20/week	$140/week
Duration:	No limit	104 weeks to unlimited	No limit	5 years (reduced after 5 years)	No limit
Deductible:	7 days	7 days	7 days (after 7 days, payment to first day)	7 days	none
Housewife - Payment: - Duration:	$120/week No limit	$60/week 12.weeks	up to $100/week No limit	$163/week max.	$70/week Limit of 12 wk.
Minors:	Actual earnings to $270/week	$30/week to 104 weeks	$100/week to 104 weeks	$87.20/week if not working--up to $120/week if working	Actual earnings to maximum of $140/week
Partial Disability					
Payment:	$50/week	$30/week	No partial disability	No partial disability	none
Duration:	104 weeks	104 weeks			
Housewife - Payment: - Duration:	$35/week 20 weeks	$30/week 12 weeks	None	None	None
Minors:	Actual earnings up to $50/week	max. $30/week up up to 52 weeks	None	None	None

	Manitoba (as of March 1, 1980)	Saskatchewan	British Columbia	Quebec	Ontario
Death					
Payment to primary dependent:	$10,000	$ 7,500	$ 5,000	Minimum $80-$120 55% of income up to $20,000	$10,000
Payment to secondary dependent:	2,000	1,500	1,000	10% of income up to $20,000	2,000
Payment to self-supporting spouse of victim:	3,000	3,000	2,500		10,000
Death (under 18 years):	1,000	$100-$1,000	$500-$1,500	$4,360	2,000
Death (18 years and over with no spouse or children):	2,000	1,000	1,000	2,180	2,000
Maximum payment (per family):	No limit	15,000	No limit	85% of net income to max. net income of $20,000	No limit
Funeral Expenses					
Maximum payment:	$ 1,000	$ 300	$ 1,000	$ 1,090	$ 1,000
Impairment					
Maximum payment:	$20,000	$10,000	none	$20,000	none
Medical Expenses	$20,000	$ 4,000	$75-100,000	Reasonable expenses not covered by another plan (up to $50 for glasses frame)	$25,000

APPENDIX C2

Road Accident Compensation in the USA

Provisions of State 'No-Fault' Laws (as at 1 January 1977)

No-fault benefits	Limitation on damages for pain and suffering	Vehicle damage
Massachusetts effective from Jan. 1, 1971		
$2,000 in benefits for medical, funeral, wage loss, and substitute service expenses. Wage loss and substitute service benefits are limited to 75% of actual loss.	Can recover only if medical costs exceed $500, or in case of death, loss of all or part of body member, permanent and serious disfigurement, loss of sight or hearing, or a fracture.	Stays under tort system Jan. 1, 1977. Prior to then, no tort liability for vehicle damage.
Delaware effective from Jan. 1, 1972		
$10,000 per person and $20,000 per accident. Covers medical costs, loss of income, loss of services, and funeral expenses (limited to $2,000).	None. But amount of no-fault benefits received cannot be used as evidence in suits for general damages.	Stays under tort system.
Florida effective from Jan. 1, 1972, for original law. This version effective Oct. 1, 1976.		
$5,000 per person for medical costs, wage loss, replacement services, and funeral costs (limited to $1,000). Deductibles of $250, $500, $1,000, and $2,000 available.	Cannot recover unless accident results in: serious non-permanent injury materially affecting normal activity and life-style during substantially all of 90 days after accident, and is medically or scientifically demonstrable at end of 90 days; loss of body member; permanent loss of body function; permanent injury other than disfigurement; significant permanent disfigurement; or death.	Stays under tort system.
Oregon effective from Jan. 1, 1972; Jan. 1, 1974, for benefits at left.		
$5,000 medical benefits. 70% of wage loss up to $750 month. $18 a day substitute services. Wage loss and substitute services paid from first day if disability lasts 14 days; are limited to 52 weeks.	None.	Stays under tort system.

No-fault benefits	Limitation on damages for pain and suffering	Vehicle damage
South Dakota effective from Jan. 1, 1972.		
Purchase is optional. $2,000 in medical expense. $60 week for wage loss, starting 14 days after injury, for up to 52 weeks. $10,000 death benefit.	None.	Stays under tort system.
Virginia effective from July 1, 1972.		
Purchase is optional. $2,000 for medical and funeral costs. $100 week for wage loss with limit of 52 weeks.	None.	Stays under tort system.
Connecticut effective from Jan. 1, 1973.		
$5,000 benefits for medical, hospital, funeral (limit $2,000), lost wages, survivors' loss, and substitute service expenses. Wage loss, substitute service, and survivors' benefits limited to 85% of actual loss.	Cannot recover unless economic loss exceeds $400, or there is permanent injury, bone fracture, disfigurement, dismemberment, or death.	Stays under tort system.
Maryland effective from Jan. 1, 1973.		
$2,500 in benefits for medical, hospital, funeral, wage loss, and substitute service expenses.	None.	Stays under tort system.
New Jersey effective from Jan. 1, 1973.		
Unlimited benefits for medical and hospital costs. Wage loss up to $100 a week for one year. Substitute services up to $12 a day up to $4,380 per person. Funeral expenses to $1,000. Survivors' benefits equal to amount victim would have received if he had not died.	Cannot recover if injuries are confined to soft tissue and medical expenses excluding hospital costs are less than $200.	Stays under tort system.
Michigan effective from Oct. 1, 1973.		
Unlimited medical and hospital benefits. Funeral benefits up to $1,000. Lost wages up to $1,000 per month, adjusted annually to keep up with cost of living, and substitute services of $20 a day payable to victim or survivor.	Cannot recover unless injuries result in death, serious impairment of body function, or permanent serious disfigurement.	Tort liability abolished.

No-fault benefits	Limitation on damages for pain and suffering	Vehicle damage
New York effective from Feb. 1, 1974.		
Aggregate limit of $50,000 for medical, wage loss, and substitute service benefits. Wage loss limited to 80% of actual loss up to $1,000 per month for three years. Substitute service benefits limited to $25 a day for one year.	Cannot recover unless medical expenses exceed $500, or injury results in death, dismemberment, significant disfigurement, a compound or comminuted fracture, or permanent loss of use of a body organ, member, function, or system.	Stays under tort system.
Arkansas effective from July 1, 1974.		
Purchase is optional. $2,000 per person for medical and hospital expenses. Wage loss: 70% of lost wages up to $140 a week, beginning 8 days after accident, for up to 52 weeks. Essential services: up to $70 a week for up to 52 weeks, subject to 8-day waiting period. Death benefit: $5,000.	None.	Stays under tort system.
Utah effective from Jan. 1, 1974.		
$2,000 per person for medical and hospital expenses. 85% of gross income loss, up to $150 a week, for up to 52 weeks. $12 a day for loss of services for up to 365 days. Both wage loss and service loss coverages subject to 3-day waiting periods that disappear if disability lasts longer than two weeks. $1,000 funeral benefit. $2,000 survivors' benefit.	Cannot recover unless medical expenses exceed $500, or injury results in dismemberment or fracture, permanent disfigurement, permanent disability, or death.	Stays under tort system.
Kansas effective from Jan. 1, 1974.		
$2,000 per person for medical expenses. Wage loss: up to $650 a month for one year. $2,000 for rehabilitation costs. Substitute service benefits of $12 a day for 365 days. Survivors' benefits: up to $650 a month for lost income, $12 a day for substitution benefits, for not over one year after death, minus any disability benefits victim received before death. Funeral benefit: $1,000.	Cannot recover unless medical costs exceed $500, or injury results in permanent disfigurement, fracture to a weight-bearing bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury, permanent loss of a body function, or death.	Stays under tort system.

No-fault benefits	Limitation on damages for pain and suffering	Vehicle damage
Texas effective 90 days after adjournment of 1973 regular session.		
$2,500 per person overall limit. Covers medical and funeral expenses, lost income, and loss of services. Purchase optional.	None.	Stays under tort system.
Nevada effective from Feb. 1, 1974.		
Aggregate limit of $10,000. Pays for medical and rehabilitation expenses; up to $175 a week for loss of income; up to $18 a day for 104 weeks for replacement services; survivors' benefits of not less than $5,000 and not more than victim would have got in disability benefits for 1 year; and $1,000 for death.	Cannot recover unless medical benefits exceed $750 or injury causes chronic or permanent injury, permanent partial or permanent total disability, disfigurement, more than 180 days of inability to work at occupation, fracture of a major bone, dismemberment, permanent loss of a body function, or death.	Stays under tort system.
Colorado effective from April 1, 1974.		
$25,000 for medical expenses. $25,000 for rehabilitation. Lost income: up to $125 a week for up to 52 weeks. Services: up to $15 a day for up to 52 weeks. Death benefit: $1,000.	Cannot recover unless medical and rehabilitation services have reasonable value of more than $500, or injury causes permanent disfigurement, permanent disability, dismemberment, loss of earnings for more than 52 weeks, or death.	Stays under tort system.
Hawaii effective from Sept. 1, 1974.		
Aggregate limit of $15,000. Pays for medical and hospital services; rehabilitation; occupational, psychiatric, and physical therapy; up to $800 monthly for income loss, substitute services and survivors' loss; and up to $1,500 for funeral expenses.	Cannot recover from 1-9-74, to 31-8-76, unless medical and rehabilitation expenses exceed $1,500. Thereafter, must exceed a floating threshold established annually by the insurance commissioner. Can also recover if injury results in death, significant, permanent loss of use of body part or function; or permanent and serious disfigurement that subjects injured person to mental or emotional suffering.	Stays under tort system.

No-fault benefits	Limitation on damages for pain and suffering	Vehicle damage
Georgia effective from Mar. 1, 1975.		
Aggregate limit of $5,000. Up to $2,500 for medical costs. 85% of lost income with maximum $200 week. $20 day for necessary services. Survivors' benefits same as lost income benefits had victim lived. $1,500 funeral benefit.	Cannot recover unless medical costs exceed $500, disability lasts 10 days, or injury results in death, fractured bone, permanent disfigurement, dismemberment. permanent loss of body function, permanent, partial or total loss of sight or hearing.	Stays under tort system.
Kentucky effective from July 1, 1975.		
Aggregate limit of $10,000. Covers medical expense; funeral expense up to $1,000: income loss up to $200 weekly, with as much as 15% deducted for income tax savings; up to $200 a week each for replacement services loss, survivors' economic loss, and survivors' replacement services loss. Motorist has right to reject no-fault.	Cannot recover unless medical expenses exceed $1,000, or injury results in permanent disfigurement; fracture of weight-bearing bone; a compound, comminuted, displaced or compressed fracture; loss of a body member; permanent injury: permanent loss of a body function; or death. But limitation does not apply to those who reject no-fault system or to those injured by driver who has rejected it.	Stays under tort system.
Minnesota effective from Jan. 1, 1975.		
$20,000 for medical expense. $10,000 for other benefits, including 85% of lost income up to $200 weekly; $15 a day. for replacement services, with 7-day waiting period; up to $200 weekly in survivors' economic loss benefits; up to $200 weekly for survivors' replacement service loss; and $1,250 for funeral benefits.	Cannot recover unless medical expenses (not including x-rays and rehabilitation) exceed $2,000; or disability exceeds 60 days; or the injury results in permanent disfigurement; permanent injury; or death.	Stays under tort system.
South Carolina effective from Oct. 1, 1974.		
Aggregate limit of $1,000. Covers medical and funeral costs, loss of earnings, and loss of essential services.	None.	Stays under tort system.

No-fault benefits	Limitation on damages for pain and suffering	Vehicle damage
Pennsylvania effective from July 19, 1975.		
Unlimited medical and rehabilitation benefits. Up to $15,000 for income loss, with monthly maximum determined by relationship of state's per capita income to nation's per capita income. Up to $25 daily for one year for replacement services. Up to $5,000 for survivors' loss. Up to $1,500 for funeral costs.	Cannot recover unless accident results in more than $750 worth of medical and dental services (excluding diagnostic x-ray and rehabilitation costs above $100); more than 60 days continuous disability; permanent, severe, cosmetic disfigurement; serious and permanent injury; or death.	Stays under tort system.
North Dakota effective from Jan. 1, 1976.		
Overall limit of $15,000 per person. Covers medical and rehabilitation costs, up to $150 a week for income loss, up to $15 a day for replacement services, up to $150 a week for survivors' income loss, up to $15 a day for survivors' replacement services loss, and up to $1,000 for funeral expenses.	Cannot recover from insured person unless injury results in more than $1,000 in medical expenses, more than 60 days of disability, serious and permanent disfigurement, dismemberment, or death.	Stays under tort system.

APPENDIX C3

PART II.

Accident Insurance and Benefits.

Application of part

20. This Part applies to accident insurance and to no other unless expressly provided. R.S.S. 1965, c. 409, s. 18

Interpretation "insured"

21. In this Part "insured" means a person to or in respect of whom or to whose dependants benefits are payable if bodily injuries are sustained by him as a result of one of the perils included in section 22, whether he is named in a certificate or not. R.S.S. 1965, c. 409, s.19.

Accident insurance

22. —(1) Subject to this Act, every person is hereby insured in the amounts hereinafter specified against loss resulting from bodily injuries sustained by him directly, and independently of all other causes, through accidental means, excluding suicide while sane or insane or any attempt thereat while sane or insane, provided that the bodily injuries are suffered as a result of:

(*a*) driving, riding in or on, or operating a moving motor vehicle, trailer or semi-trailer in Saskatachewan; or

(*b*) collision with or being struck, run down or run over by a moving motor vehicle, trailer or semi-trailer in Saskatchewan.

(2) Subject to this Act, an owner's certificate shall further insure:

(*a*) a person who is ordinarily resident in Saskatchewan and who is named in the owner's certificate but only while he is riding in or on the vehicle designated in the owner's certificate and while the vehicle is being operated by a person qualified and authorized by law to drive a moter vehicle;

(*b*) any other person who is ordinarily resident in Sakatchewan but only while he is riding in or on the vehicle designated in the owner's certificate and while the vehicle is being operated by a person qualified and authorized by law to drive a motor vehicle;

in the amounts hereinafter specified, against loss from bodily injuries sustained directly, and independently of all other causes, through accidental means, excluding suicide while sane or insane or any attempt thereat while sane or insane, provided that the bodily injuries are suffered by the person as a result of riding in or on the vehicle while it is moving on a public highway beyond the boundaries of Saskatchewan but within Canada or the continental United States of America.

(3) In the event that bodily injuries are suffered by a person mentioned in clause *(a)* or *(b)* of subsection (2) as a result of riding in or on a snowmobile as defined in *The Snowmobile Act*, while it is

moving beyond the boundaries of Saskatchewan but within Canada or the continental United States of America, subsection (2) shall apply *mutatis mutandis.*

(4) Subject to this act, an operator's certificate shall further insure the person named therein, if he is ordinarily resident in Saskatchewan, in the amounts hereinafter specified, against loss from bodily injuries sustained directly, and independently of all other causes, through accidental means, excluding suicide while sane or insane or any attempt thereat while sane or insane, provided that the bodily injuries are suffered by the person as a result of operating or driving a motor vehicle designated in an owner's certificate while it is moving on a public highway beyond the boundaries of Saskatchewan but within Canada or the continental United States of America.

(5) The word "moving" in subsections (1), (2), (3) and (4) shall not be construed to include any movement of a vehicle except when being towed or pushed by another vehicle, that is solely caused by a cranking or repair of the vehicle. R.S.S. 1965, c. 409, s. 20; 1972, c. 122, s. 11; 1973, c. 8, s. 12.

Principal sum for loss of life or loss of member

23.—(1) If bodily injuries sustained in an accident occasioned under any of the circumstances set out in section 22 totally and continuously disable an insured within twenty days from the time of the accident and prevent him from performing any and every duty pertaining to any occupation or employment, and during the period of such continuous total disability, and within one hundred and four weeks from the time of the accident, result in loss of life of the insured, the insurer shall pay the sum for which provision is made in section 27 and shall in addition pay for the period between the date of the disability and the date of the loss of life the weekly indemnity payable under section 24.

(2) If bodily injuries sustained in an accident occasioned under any of the circumstances set out in section 22 result in a loss of life of an insured within ninety days from the time of the accident the insurer shall pay, irrespective of continuous disability, the sum for which provision is made in section 27.

(3) If bodily injuries sustained in an accident occasioned under any of the circumstances set out in section 22 do not immediately result in loss of life and within twenty days from the time of the accident totally and continuously disable an insured from performing any and every duty pertaining to any occupation or employment, and during the period of such continuous total disability, but within one hundred and four weeks from the time of the accident, result in any one or more of the disabilities mentioned in the regulations under subsection (5) or in subsection (7) the insurer shall pay the sum or sums in subsection (6) or (7), as the case may be, provided for in respect of the disability or disabilities.

(4) If bodily injuries sustained in an accident occasioned under any of the circumstances set out in section 22 result in any of the disabilities mentioned in the regulations under subsection (5) within ninety days from the time of the accident, the insurer shall pay, irrespective of continuous total disability, the sum in subsection (6) provided for in respect of the disability, and the said period of ninety days may be extended by the insurer for a period not exceeding one year from the time of the accident if at the commencement of each period of thirty days after the expiration of the said ninety days a certificate is furnished from the attending physican that the insured is being treated for an injury that may eventually result in any of the disabilities mentioned in the regulations under subsection (5).

(5) The Lieutenant Governor in Council may make regulations establishing one or more rating schedules that shall be applied in estimating the nature, extent and degree of any permanent disability and may prescribe the maximum degree of disability to be attributed to any injury for the purposes of this section.

(6) The insurer is not liable for any amount under this section with respect to a disability except a permanent disability and then only for that percentage of $10,000 as is proportinate to the degree of impairment of the whole body that is or under the regulations is deemed to be occasioned by the disability.

CLASS I—SHOULDER AND FOREARM.

	Degree of Impairment of:	
Disability	Upper Extremity	Whole Body
Shoulder:		
1. Amputation:		
(a) disarticulation at shoulder (or loss above deltoid insertion)	100%	85%
(b) between shoulder and elbow	100%	50%
(c) below elbow, or loss of entire hand	80%	40%
2. Limitation of motion:		
(a) total ankylosis (arm at side):		
scapula fixed	80%	40%
scapula free	60%	30%
(b) partial ankylosis:		
(i) scapula free:—active painless motion to:		
(A) 25° abduction and rotation, 50° flexion and extension	35%	16%
(B) 90° abduction and rotation, full flexion and extension	16%	8%
(ii) scapula fixed:—painless motion to:		
(A) 25° abduction and rotation, 50° flexion and extension	60%	30%
(B) 90% abduction and rotation, full flexion and extension	20%	10%
3. Recurrent dislocation (shoulder):		
(a) without operation	36%	18%
(b) with operation and residual partial ankylosis not exceeding that mentioned in item 2 *(b) (i) (B)*	18%	9%
4. Flail shoulder	80%	40%

Disability	Degree of Impairment of: Upper Extremity	Whole Body
Elbow:		
Limitation of motion:		
1. Total ankylosis:		
(a) full extension	60%	30%
(b) 90° angle	35%	15%
2. Partial ankylosis:		
(a) 180° to 135° flexion	40%	20%
(b) 160° to 90° flexion	20%	10%
(c) 90° to 45° flexion	30%	15%

CLASS II—WRIST AND HAND.

Disability	Degree of Impairment of: Hand	Whole Body
Wrist:		
1. Total ankylosis: (exclusive of rotation)		
(a) 70° dorsiflexion	30%	15%
(b) 180° line	20%	10%
(c) 15° palmar flexion	35%	15%
Rotation ankylosis:		
(a) full supination	15%	5%
(b) full pronation	10%	5%
2. Partial ankylosis:		
(a) 45° dorsiflexion to:		
(i) 180° line	15%	5%
(ii) 15° palmar flexion	8%	3%
(b) 15° adduction to:		
(i) 180° line	5%	2%
(ii) 15° abduction	2%	1%
(c) full supination to:		
(i) 25° pronation	10%	5%
(ii) 50° pronation	3%	1%
(d) full pronation to:		
(i) 25° supination	10%	5%
(ii) 50° supination	2%	1%
Hand:		
1. Loss of entire hand	100%	40%
2. Amputation:		
(a) thumb:		
—knuckle joint	40%	12%
—distal joint	30%	6%
(b) index finger:		
—knuckle joint	25%	7%
—distal joint	11%	3%
(c) middle finger:		
—knuckle joint	20%	6%
—distal joint	9%	3%
(d) ring finger:		
—knuckle joint	10%	4%
—distal joint	5%	2%

Disability	Degree of Impairment of:	
	Hand	Whole Body
(Continued)		
(e) little finger:		
—knuckle joint	8%	3%
—distal joint	2%	1%
(f) thumb and index finger at knuckle joint	65%	20%
(g) all fingers at knuckle joints (excluding thumb)	80%	25%
—including thumb	100%	40%
3. Limitation of motion:		
(a) thumb:		
75% ankylosis of:		
(i) carpometacarpal joint	25%	3%
(ii) metacarpal-phalangeal joint (in flexion)	35%	5%
(iii) distal joint-flexion	6%	1%
—extension	10%	2%
(b) fingers:		
total ankylosis:		
(i) knuckle joint		
—mid-position	10%	3%
—full extension	15%	5%
(ii) middle joint		
—mid-position	5%	1.5%
—full extension	15%	4%
(iii) distal joint		
—mid-position	3%	1%
—full extension	5%	1.5%
loss of motion:		
(iv) loss of 50% motion metacarpal-phalangeal joint of any finger	5%	3%
(v) loss of 50% motion in proximal interphalangeal joint of finger	5%	3%

CLASS III—LEG.

Disability	Degree of Impairment of:	
	Lower Extremity	Whole Body
1. Amputation:		
(a) disarticulation at hip	100%	40%
(b) between hip and knee	90%	35%
(c) between knee and ankle	80%	30%
(d) loss of entire foot	80%	30%
2. Limitation of motion:		
(a) hip:		
(i) total ankylosis: (including shortening or lengthening)		
(A) 25° flexion	40%	15%
(B) 70° flexion	80%	30%
(ii) partial ankylosis:—flexion and extension; motion limited in hip to an arc from		
(A) 180° line to 25° flexion	30%	10%
(B) 180° line to 90° flexion	7%	2%
(b) knee:		
(i) total ankylosis:		
(A) full extension	45%	15%
(B) 90° flexion	90%	30%

Disability	Degree of Impairment of: Lower Extremity	Whole Body
(ii) partial ankylosis:		
motion limited to an arc from:		
(A) 180° line to 45° flexion	30%	10%
(B) 135° to 90° flexion	40%	15%
(iii) miscellaneous:		
(A) loose knee with chronic instability (without surgery)	40%	15%
(B) shortening of lower limb:		
1 inch	4%	1%
1½ inches	10%	3%
2 inches	22%	7%
3 inches or more	40%	15%

CLASS IV—FOOT.

Disability	Degree of Impairment of: Foot	Whole Body
1. Amputation:		
(a) entire foot	100%	30%
(b) through tarsus (Chopart's)	75%	20%
(c) through metatarsals	50%	15%
(d) all toes at metatarsal-phalangeal joint	30%	8%
(e) great toe at metatarsal-phalangeal joint	18%	5%
(f) any other toe at metatarsal-phalangeal joint	6%	1%
2. Limitation of motion:		
(a) ankylosis:		
(i) great toe (proximal joint)		
—180° line	6%	2%
—20° dorsiflexion	5%	1%
—20° plantar flexion	9%	4%
(b) partial ankylosis: (great toe)		
—limited to arc:		
(proximal joint)		
—180° line to 10° flexion	5%	1%
(distal joint)		
—180° line to 15° flexion	1%	0
limitation of 50% motion in both great toe joints	8%	3%

CLASS V—ANKLE.

Disability	Degree of Impairment of: Leg	Whole Body
1. Total ankylosis:		
(a) at 90°	40%	20%
(b) at 125° (plantar flexion)	60%	30%
2. Partial ankylosis:		
(a) 90° to:		
(i) 105° plantar flexion	30%	10%
(ii) 125° plantar flexion	15%	5%
(b) adduction and abduction:		
(i) 20° inversion and adduction to:		
(A) 180° line	9%	3%
(B) 10° eversion and abduction	5%	2%

Disability	Degree of Impairment of: Leg	Whole Body
(ii) fixed eversion deformity:		
(A) 10°	15%	4%
(B) 20°	20%	7%
(iii) fixed inversion deformity:		
(A) 10°	9%	3%
(B) 20°	15%	5%
(C) 30°	24%	8%

CLASS VI—SPINE.

Disability	Degree of Impairmant of: Whole Body
Fracture without cord involvement and where there is recovery to no disabling pain and no muscle spasm:	
1. Up to 75% normal:	
(a) cervical:	
(i) vertebral body	17%
(ii) spinous or lateral process	11.5%
(b) thoracic (above D-10):	
(i) vertebral body	17%
(ii) spinous or lateral process	12%
(c) dorso-lumbar:	
(i) vertebral body	20%
(ii) spinous or lateral process	16%
(d) lumbar:	
(i) vertebral body	20%
(ii) spinous or lateral process	16%
2. Up to 25% normal:	
(a) cervical:	
(i) vertebral body	47%
(ii) spinous or lateral process	24%
(b) thoracic (above D-10):	
(i) vertebral body	45.5%
(ii) spinous or lateral process	25%
(c) dorso-lumbar:	
(i) vertebral body	63.5%
(ii) spinous or lateral process	30.5%
(d) lumbar:	
(i) vertebral body	63.5%
(ii) spinous or lateral process	30.5%

CLASS VII—EYE.

Disability	Degree of Impairment of: Whole Body
1. Visual defect in both eyes of not less than 20/200 in the better eye after correction	100%
2. Visual defect in one eye of not less than 20/200 after correction	45%
3. Visual defect in one eye of not less than 20/100 after correction	38%
4. Visual defect in one eye of not less than 20/80 after correction	34%
5. Visual effect in one eye of not less than 20/60 after correction	29%

Disability	Degree of Impairment of: Whole Body
6. Visual defect in one eye of not less than 20/40 after correction	23%
7. Double vision continuously	6%
8. Loss of power of accommodation to distance	4%
9. Chronic photophobia or lacrimation	2%

CLASS VIII—EAR.

Disability	Degree of Impairment of: Ear	Whole Body
1. Deafness in both ears completely	100%	22.5%
2. Deafness in one ear completely	35%	8%

CLASS IX—TEETH.

Disability	Degree of Impairment of: Teeth	Whole Body
1. Loss of any 28 natural permanent teeth	100%	3.75%
2. Loss of any permanent incisor, cuspid or bicuspid	4%	.15%
3. Loss of any permanent molar or premolar	3%	.1%

CLASS X—FACE.

Disability	Degree of Impairment of: Face	Whole Body
Disfigurement:		
1. Complete loss of nose or ear	100%	20%
2. Irreducible gross malformation of bone structure	100%	20%
3. Irreparable damage to facial muscles occasioning limitation of function	90%	18%
4. Scarring where the aggregate area of all irreducible scars is in excess of 4 square inches	65%	13%
5. Scarring where the aggregate length of all irreducible scars is:		
(a) more than ½ inch but not more than 1½ inches	10%	2%
(b) more than 1½ inches but not more than 2½ inches	22%	4.5%
(c) more than 2½ inches	33%	6.5%

(7) If bodily injuries sustained in an accident occasioned under any of the circumstances set out in section 22 do not immediately result in loss of life and within ninety days from the time of the accident result in loss of function of mind or body of an insured sufficiently extensive to render the insured permanently incapable

of engaging in any occupation for wages or profit, the insurer shall pay to the insured the sum of $10,000.

(8) Where an insured suffers one or more of the disabilities mentioned in the regulations under subsection (5) and the disability mentioned in subsection (7) the insurer shall not be liable under subsections (6) and (7) to pay more than $10,000 in the aggregate in respect of those disabilities but subject to that limitation the payment of any sum under subsection (6) or (7) shall not of itself preclude payment by the insurer of any of the benefits otherwise payable under this Part; provided that where death benefits become payable in respect of the death of an insured after the insured has suffered one of the disabilities mentioned in the regulations under subsection (5) or in subsection (7) the amount of any payments made in respect of that disability shall be deducted from the amount of the death benefits, the sum payable to any one person under section 27 being reduced proportionately.

(9) In the event of disagreement with respect to the existence of, or the nature or extent of, any of the disabilities mentioned in the regulations under subsection (5) or in subsection (7), no sum shall become payable under subsection (6) or (7) unless the insured, in addition to any other examination provided for in condition 7 or 8 of the statutory conditions set forth in section 35, submits to an examination of his person by a duly qualified medical practitioner appointed by the insurer for the purpose, and where such an examination is made the opinion of the medical practitioner with respect to the existence of any of the disabilities mentioned in the regulations under subsection (5) and in subsection (7) and the nature and extent thereof shall be conclusive.

(10) Conditions 7 and 8 of the statutory conditions set out in section 35 apply, *mutatis mutandis,* with respect to an examination made pursuant to subsection (9). R.S.S. 1965, c. 409, s. 21; 1970, c. 5, s. 12; 1972, c. 10, s. 4.

Weekly indemnity for bodily injuries

24.—(1) In this section "bodily injuries" means bodily injuries sustained in any accident under any of the circumstances mentioned in section 22.

(2) If bodily injuries do within twenty days from the time of the accident totally and continuously disable an insured, other than a housewife, who:

(*a*) at the time of the accident was; or

(*b*) for any six months out of the period of the twelve consecutive months immediately preceding the accident was;

actively engaged in an occupation or employment for wages or profit and if the bodily injuries render the insured entirely incapable of engaging for wages or profit in any occupation or employment for which the insured is suited having regard to his skill and ability, the insurer shall pay to the insured an indemnity of $60 per week for the period of such continuous disability but in no event for more than one hundred and four consecutive weeks.

(3) If bodily injuries do within twenty days from the time of the accident, or immediately following the period for which the insurer has paid or is liable to pay indemnity under subsection (2), partially and continuously disable an insured, other than a housewife, who:

(*a*) at the time of the accident was; or

(*b*) for any six months out of the period of the twelve consecutive months immediately preceding the accident was;

actively engaged in an occupation or employment for wages or profit and if the bodily injuries render the insured entirely incapable of performing one or more important daily duties pertaining to the occupation or employment in which he was actively engaged at the time of the accident or to any occupation or employment for which the insured is suited having regard to his skill and ability and in which he becomes actively engaged following the accident, the insurer shall pay to the insured an indemnity of $30 per week for the period of such continuous disability but in no event for more than one hundred and four consecutive weeks less the period, if any, for which the insurer has paid or is liable to pay indemnity under subsection (2).

(4) If bodily injuries do within twenty days from the time of the accident totally and continuously disable a housewife and render her entirely incapable of performing every household duty, the insurer shall pay an indemnity of $60 per week for the period of such continuous disability but in no event for more than twelve consecutive weeks.

(5) If bodily injuries do within twenty days from the time of the accident, or immediately following the period for which the insurer has paid or is liable to pay indemnity under subsection (4), partially and continuously disable a housewife and render her entirely incapable of performing one or more important daily household duties, the insurer shall pay an indemnity of $30 per week for the period of such continuous disability but in no event for more than twelve consecutive weeks less the period, if any, for which the insurer has paid or is liable to pay indemnity to the insured under subsection (4).

(6) If an insured who has received indemnity under subsection (4) for the full period mentioned in that subsection is, at the end of that period, pursuant to the instructions of a duly qualified medical practitioner in confinement in a hospital, bed or wheelchair, the insurer shall pay an indemnity or $30 per week during the period of the confinement but in no event for more than fifty-two consecu-

tive weeks less the period for which the insurer has paid or is liable to pay indemnity to the insured under subsection (4).

(7) If bodily injuries do within twenty days from the time of the accident continuously disable an insured and the insured is pursuant to the instructions of a duly qualified medical practitioner confined to a hospital, bed or wheelchair, the insurer shall, if the insured is not entitled to indemnity under subsection (2), (3), (4), (5) or (6), pay an indemnity of $30 per week during the period of the confinement but in no event for more than fifty-two consecutive weeks.

(8) There shall be a period of seven days immediately following the commencement of the disability during which and in respect of which no indemnity shall be payable by the insurer under subsection (2), (3), (4), (5) or (7).

(9) By agreement the insurer may, in any case where it deems proper and at any time or times, make or direct commutation or lump sum payments of indemnity payable under this section, or otherwise alter the form of payment as in the circumstances seems most likely to benefit an insured. R.S.S. 1965, c. 409, s. 22; 1972, c. 10, s. 5; 1973-74, c. 4, s. 2.

Continuous indemnity for certain injuries

25.—(1) Where an insured has received indemnity under subsection (2) of section 24 for the full period mentioned in that subsection and at the end of that period it is established that the bodily injuries sustained by the insured have rendered him permanently and entirely incapable of engaging for wages or profit in any occupation or employment for which the insured is suited having regard to his skill and ability, the insurer shall, subject to subsection (2), pay to the insured an indemnity of $60 per week for the duration of the incapacity.

(2) Where, in respect of any period, an insured who is entitled to an indemnity under subsection (1) is receiving a benefit pursuant to the *Canada Pension Plan* or the *Old Age Security Act* (Canada) or pursuant to both those Acts, the indemnity provided for by subsection (1) shall be reduced by the insurer by the amount of the benefit being received by the insured in respect of that period. 1972, c. 10, s. 6.

Additional benefits

26.—(1) Where an insured sustains bodily injuries as the result of one of the perils included in section 22, the insurer shall pay in addition to all other benefits:

(*a*) a supplementary allowance to the insured, the amount and determination of which shall be in the absolute discretion of the insurer, according to the circumstance, provided that the total sum payable under this clause in respect of all injuries sustained by one person in any one accident shall not exceed in the aggregate $4,000;

(*b*) if the bodily injuries result in the loss of the life of an insured, $300 in lieu of funeral expenses, to a person who has paid such expenses or has become liable therefor.

(2) Where under any contract, bylaw or other arrangement a person would have been liable to pay hospital or medical benefits or payments in lieu thereof had this Act not been passed, the liability shall continue and any agreement to the contrary shall be null and void.

(3) Notwithstanding the violation by an insured of any term or condition in this Part, the insurer may pay directly to any person who carries on the business of an ambulance service and who had provided ambulance service to any person who he reasonably believes to be insured under this Part, such amount in respect of the service as the insurer considers reasonable and proper and upon such evidence as it deems sufficient. R.S.S. 1965, c. 409, s. 23; 1968, c. 7, s. 5; 1972, c. 10, s. 7.

Death benefits

27.—(1) Subject to subsection (2) and section 23, where an insured dies as the result of one of the perils mentioned in section 22, the insurer shall pay the sum of $7,500 to the primary dependant and $1,500 to each of the secondary dependants.

(2) Where the aggregate claims of the secondary dependants exceed the sum of $7,500 the sum of $7,500 shall be equally divided among the secondary dependants.

(3) Notwithstanding subsection (1), where more than one person is classed as a primary dependant, the total sum payable to such persons shall be calculated as though only one of them were a primary dependant and the remainder of that class were secondary dependants, but the total sum payable to all such persons shall be divided equally among them.

(4) In the event that a man and his wife die from bodily injuries sustained in the same accident but the wife dies before her husband, the benefits payable to their dependent children shall be calculated and paid as if the man died before his wife.

(5) Subject to section 23, where an insured dies as the result of one of the perils mentioned in section 22, and where no person is entitled to claim benefits under subsection (1), the insurer shall pay:

(*a*) the sum of $2,000 equally divided among those persons being son or daughter over the age of eighteen years, parent, brother or sister of the insured, for whom the necessaries of life were, at the time of the accident from which the death results, wholly or partly provided by the insured by means of definite regular contributions;

(*b*) if the insured is a wife and no benefits are payable in respect of her death under any of the preceding provisions of this section, the sum of $3,000 to the husband of the insured;

(*c*) if the insured is a child and no benefits are otherwise payable under this section in respect of the death of the insured, to the parent or parents with whom the insured usually lived, the sum hereinafter specifed, that is to say, if the insured is of the full age of:

1 year or is under the age of one year	$ 100.
7 years	$ 200.
8 years	$ 300.
9 years	$ 400.
10 years	$ 500.
11 years	$ 600.
12 years	$ 700.
13 years	$ 800.
14 years	$ 900.
15 years	$1,000.

provided that no sum shall be payable under this clause in respect of the death of a person who is over the age of eighteen years;

(*d*) if the insured is over the age of eighteen years and leaves surviving no wife or husband and no benefits are otherwise payable under this section in respect of the death, the sum of $1,000 to be divided equally between his surviving parents. R.S.S. 1965, c. 409, s. 24; 1972, c. 10, s. 8.

Presumption in case of death in same disaster

28.—(1) Where a man and his wife perish in the same disaster it shall be *prima facie* presumed that the man died first.

(2) Subject to subsection (1), where two or more persons perish in the same disaster and it is material for the purpose of this Part to determine the order of their respective deaths, it shall be *prima facie* presumed that the deaths occurred in the order of seniority and that accordingly the younger survived the older. R.S.S. 1965, c. 409, s. 25.

Payment to guardian, etc.

29.—(1) Where a primary dependant is an infant child of an insured, the insurer shall pay all sums payable to the dependant to the Official Guardian to be administered by him on behalf of the dependant.

(2) Where under this Part the insurer is liable to pay the whole or a part of any sum to a person who is mentally defective, the sum or part thereof shall be paid to the guardian or committee of that person or to the Administrator of Estates, as the case may be, to be held for the use and benefit of the mentally defective person according to law.

(3) In any other case where the insurer in its absolute discretion determines that it is desirable for the welfare of a person entitled to benefits under this Part the insurer may appoint any official administrator to receive any sums payable thereunder to that person and to hold the sums for his use and benefit.

(4) Where under this section a person is appointed for any of the purposes therein prescribed, a receipt in writing signed by the person entitled under this Part to receive any payment shall be a sufficient discharge therefor and shall exonerate the insurer from all further liability. R.S.S. 1965, c. 409, s. 26.

Sums paid to personal representative

30. The insurer shall pay all benefits accruing and payable to an insured at the time of his death to his personal representative. R.S.S. 1965, c. 409, s. 27.

No representation

31. The insurer shall make all payments of benefits in the manner and to the persons specified in this Part and if a person who is entitled thereto dies before receiving payment, his personal representative shall not be entitled to take by representation except where expressly provided herein. R.S.S. 1965, c. 409, s. 28.

No waiver

32. No insured or any of his dependants shall agree with any person to waive or forego any of the benefits to which any of them are or may become entitled under this Part and every agreement purporting to do so shall be null and void. R.S.S. 1965, c. 409, s. 29.

No attachment

33. Except with the approval in writing of the insurer, no benefits payable under this Part shall be assigned, charged or attached, nor shall they pass by operation of law except to a personal representative nor shall any claim be set off against them except as provided by subsection (2) of section 11. R.S.S. 1965, c. 409, s. 30.

Exceptions from benefits

34.—(1) The insurer shall not be liable to pay benefits under this Part to any of the following persons or their dependants:

(*a*) a resident of another province or country riding in or upon a motor vehicle not registered with The Highway Traffic Board under *The Vehicles Act* or *The Snowmobile Act;*

(*b*) a person riding in or on one of the following: a vehicle or mechanical device used for aerial navigation; a vehicle of an electric or steam railway running upon rails or tracks or solely upon railway company property, a trolley bus, a fire engine, fire department apparatus, a road roller, street sprinkler, road building or road maintenance machinery, machinery used for construction of drainage works or water conservation projects, machinery used for excavation purposes, or a tractor, except a tractor when used by a farmer in connection with his farming operations or by an implement vendor, licensed under *The Agricultural Implements Act* in connection with his implement agency business;

(*c*) a person who:

(*i*) is driving, riding in or on or operating a vehicle that, at the material time, is engaged in a race or speed test or game; or

(*ii*) while within the area that, for the time being, has been set aside for the use of spectators at or vehicles engaged in a race or speed test or game, is in collision with, struck, run down or run over by any such vehicle;

(*d*) a person who, at the material time, is in the service or employ of the Government of Canada and is driving or operating a vehicle owned by that Government.

(2) The insurer shall not be liable to pay any benefits under this Part, save and except the sum specified in section 27 as the principal sum for loss of life, in any case where, by reason of the loss for which benefits are claimed, the person sustaining the loss or his dependants are entitled to claim compensation under *The Workers' Compensation Act*.

(3) Where at the time when an insured is involved, in an accident giving rise to a claim under section 24 or 25, or during the period of disability resulting from such accident, the insured is or becomes entitled to benefits under the *Unemployment Insurance Act* (Canada), the insurer shall be liable under section 24 or 25, as the case may be, only for the amount by which:

(*a*) the income lost by the insured in respect of the period of disability calculated at a rate equal to his weekly earnings during the most recent period in which he was employed prior to the accident;

exceeds:

(*b*) the benefits actually received by him under the *Unemployment Insurance Act* (Canada) in respect of the period of disability;

but the insurer is not liable under this subsection to pay more than the amounts mentioned in section 24 or 25, as the case requires. R.S.S. 1965, c. 409, s. 31; 1973, c. 8, s. 14; 1973-74, c. 4, s. 3.

STATUTORY CONDITIONS.

Statutory conditions

35. Accident insurance provided by this Part is subject to the following statutory conditions:

Prohibitions

1. An insured shall not:

(*a*) operate a motor vehicle unless he is named in an unexpired operator's certificate or he is a person over the age of twelve years but under the age of sixteen years operating a snowmobile under supervision as required by subsection (4) of section 15 of *The Snowmobile Act;*

(*b*) operate a motor vehicle of which he is the owner unless the vehicle, being a vehicle required to be registered with The Highway Traffic Board under *The Vehicles Act* or *The Snowmobile Act*, is designated in an unexpired owner's certificate;

(*c*) operate a motor vehicle of which he is not the owner and which is required to be registered with The Highway Traffic Board under *The Vehicles Act* or *The Snowmobile Act*, unless he believes on reasonable grounds that the vehicle is designated in an unexpired owner's certificate;

(*e*) use or operate a motor or other vehicle while under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the vehicle;

(*g*) being the owner or other person in charge of a vehicle, permit, allow, suffer or connive at the use or operation of the vehicle by any person contrary to this condition; provided that it shall not of itself be a violation of this clause if the insured permits, allows, suffers or connives at the use or operation of the vehicle by a person who while not being named in an unexpired operator's certificate is nevertheless qualified and authorised by law to drive the vehicle.

Proof to show interest of claimant

2. Any claim made under this Part by a claimant shall be subject to proof of the interest of the claimant.

Who to make proof

3. Proof of claim shall be made by:

(*a*) an insured or, in the absence of the insured or his inability to make the proof, by his agent or any of the persons authorized to receive payment on behalf of an insured under section 29, the absence or inability being satisfactorily accounted for;

(*b*) the primary dependant, in the case of the death of an insured, although other persons may be entitled to receive benefits, except that:

(*i*) in the case of the absence of the primary dependant or his inability to make proof of claim, proof may be made by his agent or any other person authorized to receive payment of the benefits to which the primary dependant is entitled, the absence or inability being satisfactorily accounted for, or, if the said persons neglect or refuse to do so, by a person to whom any benefits are payable;

(*ii*) where there is no primary dependant or where the primary dependant is a child of an insured the personal representative of the insured shall make the proof of claim, or, if the personal representative neglects or refuses to do so within a reasonable time, the Official Guardian or any person entitled to receive benefits under this Part shall make the proof of claim.

Notice of claim

4. A person entitled to make a claim under this Part shall:

(*a*) give notice of claim to the insurer not later than fifteen days from the date of the accident, provided that failure to give notice shall not invalidate the claim if it is shown that it was not reasonably practicable to give notice within that time and that notice was given as soon as was reasonably practicable;

(*b*) furnish to the insurer such proof of claim as is reasonably possible and of the circumstances of the happening of the accident and the loss occasioned thereby within sixty days after the happening of the accident;

(*c*) furnish to the insurer a certificate:

(*i*) from a duly qualified medical practitioner; or

(*ii*) from a member in good standing of the Canadian Chiropractic Association, where the injury is a local complaint of the muscular or of the skeletal system as in the case of a strain, sprain or disarticulation of the spine;

showing the cause and nature of the accident for which the claim is made and indicating the duration of the disability caused thereby.

Onus on claimant where reports required

5. Where a claimant is one of the persons required by section 68, 70 or 72 to furnish the reports therein specified, he shall comply in every particular and the onus of proving compliance with the said sections shall be upon the claimant.

Limited liability where aggregate benefits exceed money value of the income of an insured

6.—(1) Except where the insured is a housewife, if the benefits for loss of income provided by this Part together with the accident benefits payable under other contracts of insurance upon the person of the insured make upon aggregate indemnity in excess of the average income of the insured prior to the accident, the insurer shall be liable only for such proportion of the benefits specified in section 24 as the loss of income bears to the aggregate of the benefits specified in section 24 and the benefits payable under the other contracts upon the person of the insured.

(2) If, on the application of subsection (1), the total of the sums receivable by the insured under section 24 or 25 and under such other contracts for loss of time is less than the amount that under the circumstances would be payable as indemnity under section 24 or 25 except for such other contracts, the insurer shall pay to the insured the amount of the deficiency.

Proof of claim

7. The insurer shall, upon receiving notice of a claim, furnish to a claimant, forms for proof of claim and if such forms are not so furnished by the insurer within fifteen days after receipt of the notice, the claimant shall be deemed to have complied with the requirements of this Part as to proof of claim if he submits, within the time fixed by clause (*b*)statutory condition 4 for filing such proofs, a written statement of the happening and character of the accident and of the extent of the loss which the claim is made.

Examination by insurer

8. The insurer shall have the right, and a claimant shall afford to the insurer an opportunity, to examine the person of the insured in respect of whom a claim is made when and as often as it may reasonably require while a claim under this Part is pending and also, in the case of death of an insured to make an autopsy subject to any law of the province relating to autopsies and any medical examination made under this statutory condition shall be made by a duly qualified medical practitioner or medical consultant at the expense of the insurer.

Time for payment

9. The insurer shall pay all benefits payable under this Part within sixty days after receipt of proof of claim except the indemnity for loss of income in amount of disability which shall be paid within thirty days after receipt of proof of claim and as long thereafter as the insurer remains liable for the disability, provided that the insurer may, if the disability continues beyond a period of sixty days, require proof thereof for that period, which proof shall be furnished within thirty days after the termination of every such period in respect of which claim is made.

Waiver

10. The insurer shall not be deemed to have waived any condition under this Part either in whole or in part unless the waiver is clearly expressed in writing signed by the insurer.

Limitation of action

11. Any action or proceeding against the insurer for the recovery of a claim under this Part shall be commenced within one year after the cause of action arose.

Benefits for hernia

12.—(1) No benefits shall be payable in respect of hernia, except clinical hernia of a disabling character that directly results from an accident that imposes liability for resulting damage or injury upon the insurer, provided that, where the hernia is the sole injury in respect of which benefits are claimed, the insured reports his condition to the insurer within seven days immediately following the occurrence of the accident.

(2) If an insured does not submit to treatment prescribed by a duly qualified physician or surgeon within two weeks of the accident benefits shall cease to be payable upon the expiry of such two weeks, provided that the insurer may in its absolute discretion extend the period for the submission.

(3) If an insured submits to an operation for hernia, the period of his disability shall cease upon the expiry of forty-two days following the day of the operation, provided that the said period may be extended by the insurer if it is satisfied that complications warranting an extension have resulted directly from the operation.

Inspection of vehicle

13. The insurer shall be permitted at all reasonable times to inspect any motor vehicle designated in an owner's certificate and its equipment. R.S.S. 1965, c. 409, s. 32; 1969, c. 5, s. 1; 1972, c. 10, s. 9; 1973, c. 8, s. 14; 1973-74, c. 4, s. 4.

APPENDIX C4

SCHEDULE C

Classification of Private Passenger Vehicle (Ordinary Use)

Each private passenger vehicle that is to be registered with The Highway Traffic Board is classified as belonging to that rate category which, in the following table, appears opposite its description by make and/or model.

Make/model	*Rate Category*
ALFA ROMEO	5
AMC	
Ambassador	5
AMX	4
Barcelona	4
Concord	3
Gremlin	4
Hornet	3
Javelin	4
Matador	4
Pacer	3
Rambler	3
Rebel	3
Spirit	4
Other	3
AMPHICAR	4
ANGLIA	1
ASTON MARTIN	12
AUDI	
100	6
Fox	6
5000 Series	10
Other	6
AUSTIN	
Healey	2
Marina	2
Mini	2
Other	2
AVANTI	10
BENTLEY	12
BERKELEY	12
BMW	
Bavaria	6
2002	6
3.0	9
320i	9
530i	12
630csi	12
733 Series	12
Other	8
BRADLEY GT	6
BORGWARD	4
BRICKLIN	12
BRISTOL	12
BUICK	
Apollo	4
Centurion	4
Century	4
Custom Sport	4
Electra	7
Estate	5
GS	4
Le Sabre	5
Riviera	7
Skyhawk	4
Skylark	4
Wildcat	5
Other	5
CADILLAC	
Calais	10
De Ville	10
Eldorado	10
Fleetwood	10
Seville	10
75	12
Other	10
CHALMERS	1
CHECKER	3
CHEVELLE	
Deluxe	4
Laguna	4
Malibu	4
Other	4
CHEVROLET	
Blazer	5
Bel Air	5
Biscayne	5
Brockwood	5
Camaro	5
Caprice	5
Chevette	2
Chevy II	3
Corvair	2
Corvette	8
El Camino	4
Impala	5
Kingswood	5
Monte Carlo	5
Monza	5
Nova	3
Nova Concours	4
Townsman	5
Vega	3
Private Trucks	4
Other (cars & station wagons)	5
CHRYSLER	
Cordoba	6
Imperial	10
Le Baron	6
Newport	6
New Yorker	7
New Yorker 5th Avenue	8
Town & Country	6
300	6
CITROEN	
SM	12
Other	5
CONSUL	2
CORD	10
CUTLASS	
Brougham	4
S	4

Make/Model	*Rate Category*
Salon	4
Supreme	4
442	4
Vista Cruiser	4
Other	4
DACIA	4
DAKI	4
DAIMLER	4
DATSUN	
B210	3
F10	3
Patrol	3
Z Series (except 280)	6
280Z	7
200 SX	4
310	3
510	3
610	3
710	3
1600	3
Private Trucks	3
Other (cars & station wagons)	3
DESOTO	4
DKW	4
DODGE	
Aspen	3
Aspen SE	4
Arrow	3
Challenger	4
Charger	5
Charger SE	6
Colt	3
Coronet	4
Dart	3
Demon	3
Diplomat	5
Magnum XE	5
Monaco (77 & later)	4
Monaco (76 & earlier)	5
Omni	4
Polara	5
Ramcharger	5
Royal Monaco	5
Sport	3
Super Bee	3
Swinger	3
Private Trucks	4
Other (cars & station wagons)	5
DUNE BUGGY	5
EDSEL	4
ENVOY	1
ESSEX	2
EXCALIBUR	12
FARGO	4
FERRARI	12
FIAT	
X 1/9	6
124	3
124 Spider	6
128	4
131	4
850	3
Other	3
FIRENZA	1
FORD	
Bronco	5
Capri	5
Capri Ghia	5
Cortina	2
Country Squire	5
Courier	3
Custom	5
Elite	5
Fairlane	2
Fairmont	3
Falcon	2
Fiesta	3
Galaxie	5
Granada	4
LTD	5
LTD II	4
Maverick	3
Mustang	5
Mustang II	4
Pinto	3
Ranchero	4
Shelby	7
Thunderbird (76 & prior)	9
Thunderbird (77 & later)	6
Thunderbird (Diamond Jubilee) (78 & later)	9
Thungerbird (Heritage Edition) (79 & later)	10
Torino	4
Private Trucks	4
Other (cars & station wagons)	5
FRANKLIN	6
GMC	
Jimmy	5
Sprint	4
Suburban	5
Private Trucks	4
Other (cars & station wagons)	4
HENRY J	1
HILLMAN	2
HONDA	
Accord	4
Civic	2
CVCC	3
Prelude	4
Other	2
HUDSON	4
HUMBER	1
HUPMOBILE	1
ISETTA	1
ISSAARD	1
INTERNATIONAL	
Scout	5
Travelall	5
Travelette	5
Private Trucks	4

Make/Model	Rate Category
Other (cars & station wagons)	4
JAGUAR	
XJ	12
XJS	12
XJ6	12
XJ12	12
XKE	12
Other	12
JEEP	
Cherokee	5
CJ	4
DJ	4
Renegade	5
Wagoneer	6
Private Trucks	4
Other (cars & station wagons)	4
JEFFREY	6
JEFFRIES	6
JENSEN	
Healey	7
Interceptor	12
Other	7
KAISER	1
LADA	3
LAFAYETTE	1
LANCIA	
Beta	7
Beta HPE	8
Gama	12
Scorpion	7
Other	7
LASALLE	11
LEMANS	
Grand Am	4
Grand Lemans	4
GTO	4
Luxury Lemans	4
Sport	4
Other	4
LINCOLN	
Continental	11
Mark III	11
Mark IV	11
Mark V	11
Versailles	10
Other	11
LLOYD	1
LOTUS	
Elite	12
Espit	12
Europa	10
Other	12
MARCOS	8
MARMON	1
MAXWELL	1
MAZDA	
Cosmo-Rotary	6
GLC	3
Mizer	3
RX7	7
929 Series	3
Private Trucks	3
Other (cars & station wagons)	4
McLAUGHLIN	1
MERCEDES	
280 Series	11
300 Series	11
350 Series	11
450 Series	11
600	11
Other	8
MEKI	4
MANTA	10
MERCURY	
Bobcat	3
Colony Park	6
Comet	3
Cougar (Other than XR7)	5
Cougar XR7	6
Cyclone	4
Grand Marquis	7
Marquis	6
Meteor	5
Monarch	4
Montego	4
Zephyr	3
Private Trucks	4
Other	6
MESSERSCHMIDT	1
METEOR	
Frontenac	2
Montcalm	5
Rideau	5
Other	5
MG	
Midget	5
Other	5
MORGAN	4
MORRIS	1
NASH	1
NISSAN	1
NSU	1
OAKLAND	1
OLDSMOBILE	
Custom Cruiser	5
F85	4
Omega	3
Starfire	4
Toronado	7
Vista Cruiser	5
88	5
98	7
Other	5
OPEL	4
OVERLAND	1
PACKARD	1
PEUGEOT	
504 Series	5
604 Series	8
Other	3

Make/Model	*Rate Category*
PIERCE ARROW	1
PLYMOUTH	
Arrow	3
Belvedere	3
Caravelle	5
Cricket	3
Fury (74 & prior)	5
Fury (75 & later)	4
Gran Fury	5
GTX	4
Horizon	4
Road Runner	5
Sapporo	3
Satellite	4
Suburban	5
Volare	3
Other	5
PONTIAC	
Acadian	2
Astre	3
Beaumont	3
Bonneville	5
Catalina	5
Firebird	5
Grand Prix	6
Grand Ville	6
Laurentian	5
Parisienne	5
Phoenix	3
Safari	5
Sunbird	4
Tempest	3
Trans AM (Firebird)	6
Ventura	3
Other	5
PORSCHE	
911	12
912 (69 & prior)	10
912 (70 & later)	12
914	6
924	12
Carrera	12
Other	6
PREFECT	1
PUNZ	1
RENAULT	
R5	4
R10	4
R12	4
R15	5
R16	4
R17	6
R17 Cordini	7
30TS	9
Other	4
REO	4
RILEY	1
ROLLS ROYCE	12
ROOSEVELT	1
ROVER	
Land Rover	4
Other	4
SAAB	5

Make/Model	*Rate Category*
SABRA	11
SIMCA	2
STUDEBAKER	2
STAR	1
SUBARU	4
SUNBEAM	2
TAUNUS	1
TERRAPLAINE	1
THAMES	1
TOYOTA	
Celica	5
Corolla	3
Corona	3
Cressida	5
Crown	3
Land Cruiser	5
Mark II	5
Private Trucks	3
Other (cars & station wagons)	3
TRIUMPH	
GT6	4
Spitfire	4
TR6	5
TR7	5
TR8	6
Other	4
VALIANT	
Barracuda	4
Duster	4
Scamp	3
Sedan	3
Other	3
VANGARD	1
VAUXHALL	1
VOLKSWAGEN	
Beetle	3
Dasher	5
Karmann Ghia	3
Rabbit	4
Scirocco	5
Type 3	3
Type 4	3
1600	3
Private Trucks	3
Other (cars & station wagons)	3
VOLVO	
120 Series	6
140 Series	6
160 Series	6
240 Series	6
260 Series	9
1800	6
Other	6
WELLOCK	1
WHIPPET	1
WILLYS	1
WOLSELEY	1
ZEPHYR	1
ZODIAC	1

APPENDIX C5

Private Passenger Cars (Ordinary Use)
Insurance Premiums

(To be Registered as "PV" Class)

Model Year

Rate Category	1981	1980	1979	1978	1977	1976	1975	1974	1973	1972	1971	1970	1969	1967-1968	1966 & Earlier
1	186	168	156	144	133	120	109	97	86	86	86	73	73	62	38
2	200	182	168	156	144	133	120	109	97	86	86	86	73	62	38
3	221	203	182	168	156	144	133	120	109	97	86	86	86	62	38
4	233	215	203	182	168	156	144	133	120	109	97	86	86	62	38
5	245	227	215	203	182	168	156	144	133	120	109	97	86	62	38
6	256	238	227	215	203	182	168	156	144	133	120	109	97	62	38
7	268	250	238	227	215	203	182	168	156	144	133	120	109	62	38
8	280	262	250	238	227	215	203	182	168	156	144	133	120	62	38
9	292	274	262	250	238	227	215	203	182	168	156	144	133	62	38
10	302	284	274	262	250	238	227	215	203	182	168	156	144	88	38
11	314	296	284	274	262	250	238	227	215	203	182	168	156	88	38
12	326	308	296	284	274	262	250	238	227	215	203	182	168	88	38

APPENDIX C6

SCHEDULE B

Rating Units for Convictions and Suspensions

1. One rating unit point shall be entered upon the record maintained by the insurer under section 8 of the regulations against a person for each occasion on which he is convicted of any of the offences which are listed in the following table, together with corresponding or related provisions of The Vehicles Act.

	Corresponding or related Vehicles Act provision(s)		
Offence	*Section*	*Subsection*	*Clause*
Driving unregistered vehicle	30		
No driver's licence	66	(1)	
Holding more than one licence	68		
Inadequate brakes	117	(7)	
Improperly equipped motorcycle operator or passenger	134		
Failure to signal	163		

2. One rating unit shall be entered upon the record maintained by the insurer under section 8 of the regulations against a person for each occasion on which he is convicted of having violated a provision of the law of any province or territory of Canada or of any state of the United States or of a bylaw of any municipal corporation or duly constituted Authority in Canada or in the United States that is substantially similar to any of the offences mentioned in section 1 of this Schedule B.

3. Two rating unit points shall be entered upon the record maintained by the insurer under section 8 of the regulations against a person for each occasion on which he is convicted of any of the offences which are listed in the following table together with corresponding or related provisions of The Vehicles Act.

Offence	*Corresponding or related Vehicles Act provision(s)*		
	Section	*Subsection*	*Clause*
Operating beyond restricted use of licence	80	(2)	
Permitting riding on exterior part of vehicle	110	(1)	
Overcrowding steering compartment	110	(3)	
Unmarked overhanging loads	123	(9)	
Having dirty windows	126	(1)	
		(2)	
Exceeding speed limit	139	(1)	
		(2)	
		(3)	
		(4)	
		(5)	
		(6)	
		(7)	
Travelling too fast for road conditions	139	(8)	
Driving too slow	139	(9)	
Following too closely	142	(1)	
		(2)	
		(3)	
Failing to keep to the right	144	(1)	(a)
Improper overtaking	144	(1)	(b)
			(c)
Impeding overtaking vehicle	144	(1)	(d)
Improper turn	144	(2)	
		(3)	
		(5)	
		(6)	
Failing to yield	144	(8)	
		(9)	
Overtaking and passing on a curve or a bridge or on a grade when view obstructed	144	(10)	
Failure to keep to right of centre	144	(12)	
Driving wrong way on one way street	144	(13)	
Failure to yield to pedestrians	144	(14)	
Failure to yield to emergency vehicles	145		
Straddling driving lanes	147		(a)
Driving on median	148	(1)	
Improperly entering or leaving controlled access highway	149		
Failing to yield as required	150	(1)	(a)(i)
		(1)	(b)(i)
		(1)	(g)(i)
		(1)	(h)
		(2)	(a)
	156		
Failing to stop as required	150	(1)	(c)(i)
		(1)	(d)(i)
		(1)	(e)(i)
		(1)	(f)(i)
		(3)	(a)
	159	(1)	
		(3)	
	165		
	232		
Overtaking at intersection	154		
Improperly entering public highway	157		
Improper stopping on highway	158	(1)	
		(2)	
Failure to dim headlights	161		
Failure to extinguish spotlight	162		
Towing bicycles, sleds, etc.	170		
Carrying licence of another	244		

4. Two rating units shall be entered upon the record maintained by the insurer under section 8 of the regulations against a person for each occasion on which he is convicted of having violated a provision of the law of any province or territory of Canada or of any state of the United States or of a bylaw of any municipal corporation or duly constituted Authority in Canada or in the United States that is substantially similar to any of the offences mentioned in section 3 of this Schedule B.

5. Two rating units shall be entered upon the record maintained by the insurer under section 8 of the regulations against a person for each occasion upon which he is convicted of having violated a bylaw of any municipal corporation or duly constituted Authority in Canada or in the United States prohibiting 'backing up when unsafe' or similarly worded prohibition or any other prohibition which is not otherwise substantially similar to any of the offences mentioned in sections 1, 3, 6 or 8 of this Schedule B.

6. Three rating unit points shall be entered upon the record maintained by the insurer under section 8 of the regulations against a person for each occasion on which he is convicted of any of the offences which are listed in the following table, together with corresponding or related provisions of The Vehicles Act.

Offence	*Corresponding or related Vehicles Act provision(s)*		
	Section	*Subsection*	*Clause*
Crossing solid line	147		(b) (c)
Improper meeting or passing school bus when loading or unloading	153		
Failing to stop at railway crossings	159	(2)	
		(4)	
		(5)	(a)
			(b)
Placing nails, glass, etc., on highway	240		

7. Three rating units shall be entered upon the record maintained by the insurer under section 8 of the regulations against a person for each occasion on which he is convicted of having violated a provision of the law of any province or territory of Canada or of any state of the United States or of a bylaw of any municipal corporation or duly constituted Authority in Canada or in the United States that is substantially similar to any of the offences mentioned in section 6 of this Schedule B.

8. Four rating unit points shall be entered upon the record maintained by the insurer under section 8 of the regulations against a person for each occasion on which he is convicted of any of the offences which are listed in the following table, together with corresponding or related provisions of The Vehicles Act.

Offence	*Corresponding or related Vehicles Act provision(s)*		
	Section	*Subsection*	*Clause*
Driving without due care and attention	140		
Racing on highway	143		
Failure to report an accident	173	(1)	
Giving false information	245		
Driving while disqualified or prohibited	248		

9. Four rating units shall be entered upon the record maintained by the insurer under section 8 of the regulations against a person for each occasion on which he is convicted of having violated a provision of the law of any province or territory of Canada or of any state of the United States or of a bylaw of any municipal corporation or duly constituted Authority in Canada or in the United States that is substantially similar to any of the offences mentioned in section 8 of this Schedule B.

10. There shall be entered upon the record maintained by the insurer under section 8 of the regulations, for each occasion on which there has been an order made by a court of competent jurisdiction prohibiting him from driving as a consequence of his having been convicted of a violation of the Criminal Code of Canada or of a criminal law in the United States of America that is substantially similar, the number of rating units that in the following table is set opposite the period of suspension ordered; viz:

Period of Suspension	*Rating Units*
6 months or less	10
more than 6 months but not exceeding 12 months	16
more than 12 months but not exceeding 24 months	20
more than 24 months	24

APPENDIX C7

CLASSIFICATION OF DRIVERS

Class		Basic Premium
A	3 or less rating units	$ 5.00
B	4 or 5 rating units	$ 20.00
C	6 or 7 rating units	$ 30.00
D	8 or 9 rating units	$ 50.00
E	10 or 11 rating units	$ 70.00
F	12 or 13 rating units	$ 90.00
G	14 or 15 rating units	$110.00
H	16 or 17 rating units	$130.00
J	18 or 19 rating units	$150.00
K	20 or 21 rating units	$170.00
M	22 or more rating units plus $10.00 for each additional unit over 21.	$170.00
N	When a driver has completed a suspension period, the driver becomes a class "N" but only for the duration of the licence period then applicable to the driver. Upon application for a succeeding licence period the driver is classified to a class applicable above, having regard to accumulated rating units. The basic premium payable is shown opposite that class.	
R	$10.00 per month or fraction thereof for the period for which the restricted licence is issued. This licence is issued on the recommendation of the Driver Licence Appeal Committee.	

APPENDIX C8

PART III

Comprehensive Insurance and Insurance Money.

Application of Part

36. This Part applies to comprehensive insurance and to no other unless expressly provided. R.S.S. 1965, c. 409, s. 33.

Interpretation, "insured"

37. In this Part "insured" means a person to whom insurance money is payable in the event of loss of or damage to a vehicle resulting from one of the perils mentioned in section 35. R.S.S. 1965, c. 409, s. 34.

Comprehensive insurance

38.—(1) Subject to this Act, an owner's certificate shall further insure the person named therein in the amounts hereinafter specified against direct and accidental loss of or damage to the vehicle designated therein, including its equipment, occurring in Canada, or the continental United States of America, or upon a vessel plying between ports thereof, from any peril.

(2) Where loss or damage arises from a peril against which insurance is provided for by subsection (1) the insurer shall, in addition to any other amount payable under this Part, pay to or on behalf of the insured any general average, salvage and fire department charges, and customs duties of the Government of the United States of America, for which the insured is legally liable.

(3) Each occurrence causing loss or damge for which insurance is provided by subsection (1) gives rise to a separate claim in respect of which the liability of the insurer is limited to the amount of loss or damage in excess of the deductible amount fixed by the regulations for a vehicle of the class to which the vehicle that is lost or damaged belongs, but the insurer is not liable under this section for loss or damage:

(*a*) to tires or consisting of or caused by mechanical fracture or breakdown of any part of the vehicle or rusting, corrosion, wear and tear, freezing or explosion within the combustion chamber, unless the loss or damage is coincident with other loss or damage that is insured against under this section;

(*b*) caused by the conversion, embezzlement, theft or secretion by a person in lawful possession of the vehicle under a mortgage, conditional sale, lease of other similar written or verbal agreement;

(*c*) caused by the voluntary parting with title or ownership, whether or not the parting is induced by a fraudulant scheme, trick, device or false pretence;

(*d*) caused directly or indirectly by contamination by radioactive material;

(*e*) to radios designed for both transmitting and receiving or their equipment;

(*f*) to contents of trailers or to rugs or robes;

(*g*) caused by theft by a person residing in the same dwelling premises as the insured, or by an employee of the insured engaged in the operation, maintenance or repair of the vehicle whether or not the theft occurs during the hours of the employment or service.

(4) The insurer is not liable under this section for loss or damage in respect of a vehicle that is used or operated by a dealer under a dealer's certificate issued under section 55 of *The Vehicles Act* or section 5 of *The Snowmobile Act*, or that is used or operated under a T trailer certificate of registration issued under section 59 of *The Vehicles Act* unless:

(*a*) at the time when the loss or damage occurs the vehicle actually carries, in accordance with *The Vehicles Act* or *The Snowmobile Act*, as the case requires, a number plate issued under the appropriate Act;

(*b*) the loss or damage is caused directly by accidental collision of the vehicle with another object either moving or stationary or by accidental upset;

and the insurer is not in any event liable for loss or damage in respect of such a vehicle occuring after the theft thereof and before its recovery. R.S.S. 1965, c. 409, s. 35; 1973, c. 8, s. 15.

Statutory conditions

39. Comprehensive insurance in respect of any vehicle shall be subject to the following statutory conditions:

Insured to notify insurer of other insurance

1. Upon the happening of any loss or damage for which insurance is provided under this Part the insured shall promptly notify the insurer of any other insurance of the same interest, whether valid or not, insuring against all or any part of the loss or damage.

Prohibited use of vehicle

2.—(1) The insured named in an owner's certificate shall not drive or operate the vehicle designated therein:

(*a*) while under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the vehicle;

(*b*) while he is not for the time being qualified and authorized by law to drive or operate the motor vehicle or, if the law does not prescribe any qualification or authority, subject to subsection (4) of section 15 of *The Snowmobile Act* while under the age of sixteen years; or

(*c*) in any race or speed test.

(2) The insured named in an owner's certificate shall not permit, suffer, allow or connive at the use of the vehicle designated therein:

(*a*) by a person under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the vehicle;

(*b*) by a person who is not for the time being qualified and authorized by law to drive or operate the motor vehicle or, if the law does not prescribe any qualification or authority, subject to subsection (4) of section 15 of *The Snowmobile Act* by a person under the age of sixteen years; or

(*c*) in a race or speed test.

Certain other uses prohibited

3. The vehicle designated in an owner's certificate shall not be operated for any purpose that is contrary to *The Vehicles Act* or *The Snowmobile Act*, the regulations thereunder or the certificate of the registration of the vehicle issued thereunder and, without restricting the generality of the foregoing, the vehicle shall not be operated in violation of the conditions, limitations, restrictions and prohibitions set forth in *The Vehicles Act* or *The Snowmobile Act*, as the case requires, regulations or certificate relating to the combined weight of the vehicle and its load, the time during which and the territory within which the vehicle may be operated and the number, kind or quantity of passengers or goods that may be carried on the vehicle, nor shall the vehicle be rented or leased, under the arrangement commonly referred to as "U-Drive" or "Auto-lease", unless the intention to so rent or lease the vehicle has been disclosed in the application for the owner's certificate.

War risks excluded

4. The insurer shall not be liable for loss or damage that is caused directly or indirectly by bombardment, invasion, civil war, insurrection, rebellion, revolution, military or usurped power, or by operations of armed forces while engaged in hostilities, whether or not war has been declared, or by civil commotion arising from any of the foregoing.

Necessity of reporting

5. Where the insured is a person required to furnish a report under section 68, 70 or 72, he shall comply in every particular and the onus of proving such compliance shall be upon him.

Loss of or damage to a vehicle

6. Upon the occurrence of any loss of or damage to the vehicle designated in an owner's certificate, the insured shall, if the loss or damage is insured against under section 38:

(*a*) forthwith give notice thereof in writing to the insurer, in addition to any report that may be required by statutory condition 5, with fullest information obtainable at the time, and shall, at the expense of the insurer, and as far as reasonably possible, protect the vehicle from further loss or damage, and any such further loss or damage accruing directly or indirectly from a failure to protect shall not be recoverable under this Part, and no repairs shall be undertaken or any physical evidence of the loss or damage removed without the written consent of the insurer, except such repairs as are immediately necessary for the protection of the vehicle from further loss or damage, until the insurer has had a reasonable time to make the inspection provided for in statutory condition 11;

(*b*) deliver to the insurer within ninety days of the loss or damage a statutory declaration stating so far as the insured knows or believes, the place, time, cause and amount of the loss or damage, the interest of the insured and all others therein, the encumbrances thereon, all other insurance whether valid or invalid covering the vehicle, and that the loss or damage did not occur through any wilful act or neglect, procurement, means or connivance of the insured.

Examination of insured

7. The insured shall submit to examination, under oath, and shall produce for examination at such reasonable place as is designated by the insurer or its representative all documents in his possession or control that relate to the matters in question and permit copies thereof and extracts therefrom to be made.

Insurer liable for cash value of vehicle

8.—(1) The insurer shall not be liable beyond the actual cash value of the vehicle at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value with proper deduction for depreciation, however caused, and shall in no event exceed what it would cost to repair or replace the vehicle or any part thereof with material of like kind and quality; provided that in the event of any part of the vehicle being obsolete and out of stock, the liability of the insurer in respect thereof shall be limited to the value of such part at the time of loss or damage not exceeding the maker's last list price.

Repair, etc., in lieu of payment

(2) Except where an appraisal has been had, the insurer, instead of making payment, may within a reasonable time repair, rebuild or replace the property damaged or lost with other of like kind and quality, giving written notice of its intention to do so within seven days after receipt of the proofs of loss; but there can be no abandonment of the vehicle to the insurer without its consent, and in the event of the insurer exercising such option, the salvage, if any, shall revert to it.

In case of disagreement

9.—(1) In the event of disagreement as to the nature and extent of the repairs and replacements required, or as to their adequacy, if effected, or as to the amount payable in respect of any loss or damage, the question shall be determined by appraisers before recovery can be had under this Part whether the right to recover under this Part is disputed or not, and independently of all other questions.

(2) The insured and the insurer shall each select one appraiser, and the two so chosen shall then select a disinterested umpire, and thereafter the two appraisers together shall estimate or appraise the loss or damage, stating separately sound value and damage, or determine the adequacy of the repairs or replacements, and, failing to agree, shall submit their differences to the umpire.

(3) If either party fails to name an appraiser within seven days after being served with written notice to do so, or if the appraisers fail to agree upon an umpire within fifteen days after their appointment, or if an appraiser or umpire refuses to act or is incapable of acting, or dies, a judge of the Court of Queen's Bench or a judge of the district court acting at the judicial centre nearest to which the appraisal is to be made may appoint an appraiser or umpire on the application of the insured or the insurer.

(4) An award in writing of the two appraisers, or of one appraiser and the umpire, shall determine the nature and extent or adequacy of the repairs and replacements made or required, or the amount of the loss or damage.

(5) Each party shall pay the appraiser selected by him, and shall bear equally the other expenses of the appraisal and of the umpire.

Waiver

10. Neither the insurer nor the insured shall be deemed to have waived any term or condition of this Part by any act relating to the appraisal or to the delivery and completion of proofs of loss, or to the investigation or adjustment of the claim.

Inspection of vehicle

11. The insurer shall be permitted at all reasonable times to inspect the vehicle designated in an owner's certificate and its equipment.

Other insurance

12.—(1) If the insured named in an owner's certificate has or places any additional or other valid insurance extending to indemnify him against loss or damage that but for this condition would be within the limits of the insurer's liability under this Part, the insurer shall not be liable to pay any insurance moneys in respect of such loss or damage.

(2) Where the Superintendent of Insurance in the exercise of any general or special power conferred upon him by *The Saskatchewan Insurance Act* approves a form of policy of automobile insurance that purports to limit the liability of the insurer thereunder to an amount in excess of the amount payable under this Part by the insurer under this Act nothing in subsection (1) of this condition affects the validity of that policy and where such a policy is in effect the insurer's liability under this Part shall be ascertained as if no other insurance were in effect.

Time and manner of payment of insurance money

13. The insurer shall pay any insurance money for which it is liable within sixty days after the proof of loss has been received by it, or, where an appraisal is had under statutory condition 9, within fifteen days after the award is rendered.

Limitation of action

14. Every action or proceeding against the insurer under this Part in respect of loss of or damage to a vehicle shall be commenced within one year next after the happening of the loss or damage and not afterwards.

Who may give notice and proof of claim

15. Notice of claim may be given and proof of claim may be made by the agent of the insured named in a certificate in case of absence or inability of the insured to give the notice or make the proof, the absence or inability being satisfactorily accounted for, or in the like case, or if the insured refuses to do so, by a person to whom any part of the insurance money is payable. R.S.S. 1965, c. 409, s. 36; 1968, c. 9, s. 6; 1973, c. 8, s. 16; 1973-74, c. 4, s. 5.

APPENDIX C9

PART IV.

Bodily Injury Liability and Property Damage Liability Insurance.

Bodily injury liability and property damage liability insurance

42.—(1) An owner's certificate shall further insure the person named therein and every other person who with his consent personally drives the vehicle designated therein, against the liability imposed by law upon the person named therein and the other person for loss or damage arising from the ownership, use or operation of the vehicle within Canada or the continental United States of America, or upon a vessel plying between ports thereof and resulting from bodily injury to or the death of any person or damage to property, provided that the insurer shall not be liable under an owner's certificate:

(*a*) for any liability imposed by any workers' compensation law upon any person insured by the certificate;

(*b*) for loss or damage resulting from bodily injury to or the death of any person insured by the certificate;

(*c*) to any person, not the owner of the vehicle covered by the certificate, engaged in the business of an automobile garage, repair shop or service station or engaged in business as an automobile dealer, for loss or damage sustained while engaged in the operation or repair of the vehicle in the course of that business;

(*d*) for any loss or damage resulting from bodily injury to or the death of any person being carried in or upon or entering or getting onto or alighting from the vehicle;

(*e*) for loss or damage resulting from bodily injury to or the death of any employee of any person insured by the certificate while engaged in the operation or repair of the vehicle;

(*f*) for loss of or damage to property carried in or upon the vehicle or to any property owned or rented by, or in the care, custody or control of, any person insured by the certificate;

(*g*) for any amount in excess of the limits mentioned in subsection (2) and the expenditures provided for in section 44; or

(*h*) for loss or damage resulting from bodily injury to or the death of any person or damage to property arising directly or indirectly out of a nuclear energy hazard except to the extent specifically provided in such case by section 43.

(2) Whether the loss or damage results:

(*a*) from bodily injury to or the death of one or more persons or from damage to property; or

(*b*) from bodily injury to or the death of one or more persons and also from damage to property;

the liability of the insurer under subsection (1) for all loss or damage so resulting in any one accident, irrespective of the number of claims arising out of the accident, is limited to the amount by which $35,000 exceeds the amount by which the liability of the insured for the loss or damage is reduced under section 79.

(3) Where in any one accident loss or damage results from bodily injury or death and loss or damage to property:

(*a*) any claims arising out of bodily injury or death shall have priority over claims arising out of loss of or damage to property to the extent that $30,000 exceeds the amount by which the laibility of the insured for loss or damage resulting from bodily injury or death in that accident is reduced under section 79; and

(*b*) any claims arising out of loss or damage to property shall have priority over claims arising out of bodily injury or death to the extent that $5,000 exceeds the amount by which the liability of the insured for loss or damage resulting from loss of or damage to property in that accident is reduced under section 79.

STATUTORY CONDITIONS.

Statutory conditions

48. Bodily injury liability and property damage liability insurance provided by an owner's certificate under this Part shall be subject to the following conditions which shall be statutory conditions:

Insured to give notice of other insurance

1. Upon the happening of any event for which insurance is provided by an owner's certificate under this Part, the person insured by virtue of the owner's certificate shall promptly notify the insurer of any other insurance of the same interest, whether valid or not, insuring against all or any part of his liability for which insurance is provided by the owner's certificate.

Prohibited use of vehicle

2.—(1) The person insured by the owner's certificate shall not drive or operate the vehicle designated therein:

(*a*) while under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the vehicle;

(*b*) while he is not for the time being qualified and authorized by law to drive or operate the vehicle or, if the law does not prescribe any qualification or authority, subject to subsection (4) of section 15 of *The Snowmobile Act* while under the age of sixteen years; or

(*c*) in any race or speed test.

(2) The person insured by the owner's certificate shall not permit, suffer, allow or connive at the use of the vehicle designated therein:

(*a*) by a person under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the vehicle; or

(*b*) by a person who is not for the time being qualified and authorized by law to drive or operate the vehicle or, if the law does not prescribe any qualification or authority, subject to subsection (4) of section 15 of *The Snowmobile Act* by a person under the age of sixteen years; or

(*c*) in a race or speed test.

Certain other uses prohibited

3. The vehicle designated in an owner's certificate shall not be operated for any purpose that is contrary to *The Vehicles Act* or *The Snowmobile Act*, the regulations thereunder or the certificate of the registration of the vehicle issued thereunder, and without restricting the generality of the foregoing the vehicle shall not be operated in violation of the conditions, limitations, restrictions and prohibitions set forth in *The Vehicles Act* or *The Snowmobile Act*, as the case may be, regulations or certificate relating to the combined weight of the vehicle and its load, the time during which and the territory within which the vehicle may be operated and the number, kind or quantity of passengers or goods that may be carried on the vehicle, nor shall the vehicle be rented or leased, under the arrangement commonly referred to as "U-Drive" or "Auto-lease", unless the intention to so rent or lease the vehicle has been disclosed in the application for the owner's certificate.

Loss or damage to persons or property

4.—(1) Where indemnity is, or might be asserted to be, provided under this Part, the person insured by the owner's certificate shall:

(*a*) promptly give to the insurer written notice, with all available particulars, of any accident involving loss or damage to persons or property, and of any claim made on account of accident;

(*b*) verify by affidavit or statutory declaration, if required by the insurer, that the claim arises out of the operation or use of a vehicle designated in the owner's certificate and that the person operating or responsible for the operation of the vehicle at the time of the accident is a person insured by the certificate; and

(*c*) forward immediately to the insurer every writ, letter, document or advice received by him from or on behalf of the claimant.

(2) The person insured by the owner's certificate shall not voluntarily assume any liability or settle any claim except at his own cost, and the person so insured shall not interfere in any negotiations for settlement or in any legal proceedings, but, whenever requested by the insurer, shall aid in securing information and evidence and the attendance of any witness, and shall co-operate with the insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.

Waiver

5. Neither the insurer nor the person insured by the owner's certificate shall be deemed to have waived any term or condition of this Part by any act relating to the appraisal or to the delivery and completion of proofs of loss pursuant to any provision of this Act, or to the investigation or adjustment of a claim.

Inspection of vehicle

6. The insurer shall be permitted at all reasonable times to inspect the vehicle designated in the owner's certificate and its equipment.

Other insurance

7.—(1) Subject to subsection (2), where a contract of insurance or other instrument purports to insure a person, whether named in the contract or other instrument or not, against his liability for loss or damage resulting from bodily injury to or the death of any person or damage to property, and that person is insured under this Part, whether named in an owner's certificate or not, the insurer under this Act shall be liable with respect to any loss or damage for which indemnity is provided by this Part only as hereinafter provided, that is to say:

1. the liability for the loss or damage of the insurer entering into the contract of insurance or issuing the other instrument, in this statutory condition referred to as the "other insurer", shall be ascertained separately as if this Part had not been enacted;

2. unless the loss or damage exceeds the amount of the liability of the other insurer therefor, as ascertained pursuant to paragraph 1, the insurer under this Act shall not be liable under this Part with respect to the loss or damage;

3. if the loss or damage exceeds the amount of the liability of the other insurer therefor, as ascertained pursuant to paragraph 1, the liability under this Part of the insurer under this Act shall be limited to the amount of the excess not exceeding the limit mentioned in subsection (2) of section 42.

(2) Where the Superintendent of Insurance in the exercise of any general or special power conferred upon him by *The Saskatchewan Insurance Act* approves a

form of policy of automobile insurance that purports to limit the liability of the insurer thereunder to an amount in excess of the amount payable under this Part by the insurer under this Act or that contains words to a like effect, nothing in subsection (1) affects the validity of that policy, and where such a policy is in effect the liability of the insurer under this Act shall, subject to subsection (4) of section 45, be ascertained as if no other insurance were in effect.

Time and manner of payment of insurance money

8.—(1) The insurer shall pay the insurance money for which it is liable under this Part within sixty days after the proof of loss has been received by it.

(2) The person insured by the owner's certificate may not bring an action to recover the amount of a claim under the certificate unless the requirements of statutory condition 4 are complied with and the amount of the loss has been ascertained by a judgment against the insured after trial of the issue, or by agreement between the parties with the written consent of the insurer.

(3) Every action or proceeding against the insurer under this Part in respect of loss or damage to persons or property shall be commenced within one year next after the cause of action arose and not afterwards.

Who may give notice and proofs of claim

9. Notice of claim may be given and proofs of claim may be made by the agent of the insured named in the owner's certificate in case of absence or inability of the insured to give the notice or make the proof, the absence or inability being satisfactorily accounted for, or in the like case, or if the insured refuses to do so, by a person to whom any part of the insurance money is payable. R.S.S. 1965, c. 409, s. 45; 1973, c. 8, s. 18; 1973-74, c. 4, s. 7.

Remedy for injuries etc., in hit-and-run accident

51.—(1) Where bodily injury to or the death of a person or damage of $200 or more to property arises out of the use or operation within Saskatchewan of a motor vehicle and:

(*a*) the names of both the owner and the operator of the motor vehicle are not known or ascertainable; or

(*b*) the name of the operator is not known or ascertainable and the owner is not liable to an action for damages for the injury, death or property damage;

any person who has a cause of action:

(*c*) in the case mentioned in clause *(a)*, against the owner or the operator;

(*d*) in the case mentioned in clause *(b)*, against the operator;

in respect of the bodily injury, death or property damage may bring an action against the insurer as nominal defendant, either alone or as a defendant with others alleged to be responsible for the injury, death or property damage.

Application for payment by insurer where person has cause of action

54.—(1) Where the death of or bodily injury to or loss of or damage to property of a person is occasioned in Saskatchewan by an uninsured motor vehicle, any person who would have a cause of action against the owner or driver of the uninsured motor vehicle in respect of the death, bodily injury, loss of or damage to property, except a person entitled to make an application under subsection (1) of section 55, may make application, in a form prescribed by the insurer, for payment by the insurer under this Act of the damages in respect of the death, bodily injury, loss of or damage to property.

(2) Upon receipt of an application under subsection (1) the insurer shall, by registered mail, forward a notice of the application for payment by the insurer under this Act to the owner and the driver of the uninsured motor vehicle against whom liability for the damages occasioned by the operation of the uninsured motor vehicle is alleged, addressed to them at their latest addresses as shown in the records of the insurer.

(3) The insurer may, in respect of an application made under subsection (1), make payment, subject to section 59, of an amount that it considers proper in all the circumstances if:

(*a*) the applicant executes a release under seal of all claims arising out of the motor vehicle accident that occasioned the damages to be paid by the insurer; and

(*b*) subject to clause *(c)*, the owner and driver of the uninsured motor vehicle execute a consent to the payment by the insurer of the sum on account of damages and also execute under seal an undertaking to repay to the insurer the amount to be paid by the insurer; or

(*c*) the person to whom a notice is sent in accordance with subsection (2) does not reply within thirty days after the date on which the notice was sent either:

(*i*) by mail; or

(*ii*) by attending in person at the place named in the notice;

and disputes his liability to the person making application under subsection (1).

(4) Where an amount is paid by the insurer under subsection (3), the insurer is subrogated to the rights of the person to whom that amount is paid and the insurer may maintain an action in its name or in the name of that person against any other person or persons responsible for the use or operation of the uninsured motor vehicle.

(5) Where payment is made under subsection (3) The Highway Traffic Board shall forthwith suspend the privilege of the person to whom the notice was sent pursuant to subsection (2) of driving a motor vehicle in Saskatchewan and also his privilege of using or having a motor vehicle on a public highway in Saskatchewan, and no licence to drive a motor vehicle and no permit or certificate of registration in respect of a motor vehicle shall at any time thereafter be granted or issued to or in respect of that person under *The Vehicles Act* or *The Snowmobile Act*, and no such licence, permit or certificate shall be renewed, until proof of financial responsibility in a form and to the amount prescribed by Part VI of *The Vehicles Act* or by that Part when that Part is applied to *The Snowmobile Act*, has been furnished and repayment of the amount paid by the insurer has commenced on the undertaking mentioned in clause *(b)* of subsection (3).

RESULTS OF THE AUTOMOBILE ACCIDENT INSURANCE ACT BY LICENSE YEAR

For the Period April 1, 1946 to April 30, 1977

	1946–70 License Year	1970–71 License Year	1971–72 License Year	1972–73 License Year	1973–74 License Year	1974–75 License Year	1975–76 License Year	1976–77 License Year	Total
INCOME									
Net Premiums Written	$204,237,199	$ 25,871,508	$ 27,281,538	$ 29,914,828	$ 36,662,034	$ 50,313,045	$ 57,014,676	$ 78,159,460	$509,454,368
Interest Earned	10,004,168	2,263,837	2,355,205	2,654,737	3,113,722	4,522,658	4,620,564	6,408,070	35,950,961
Sundry	94,368	1,080	1,268	1,223	1,551	(86,817)	(123,590)	(67,731)	(178,651
Total Income	214,335,735	28,136,505	29,638,011	32,570,788	39,777,307	54,748,886	61,519,650	84,499,796	545,226,678
CLAIMS INCURRED									
Accident	22,059,749	1,851,133	1,607,761	3,164,838	3,566,851	3,987,085	4,553,055	4.617.238	45,407,710
Public Liability	30,375,841	4,622,613	5,223,401	6,413,475	6,786,442	7,626,454	9,165,034	9.087.236	79,300,496
Property Damage	34,333,367	4,572,082	5,035,401	5,609,439	7,216,785	7,705,921	9,371,446	8.985.202	82,829,613
Collision	79,824,353	8,558,996	9,873,251	12,603,595	16,157,906	21,371,718	31,392,666	35.751 067	215,613,552
Fire and Theft	6,411,946	769,954	1,012,405	1,027,877	1,132,977	1,738,805	2,388,209	3.273.883	17,755,058
Total Claims	173,005,256	20,374,778	22,752,219	28,899,224	34,860,961	42,429,983	56,870,410	61,714.678	440,907.459
% of Net Premiums Written	84.71 %	78.75 %	83.39 %	96.61 %	95.09 %	84.33 %	99.75 %	78.95 %	86.35 %
% of Total Income	80.72 %	72.41 %	76.76 %	88.73 %	87.64 %	77.50 %	92.44 %	73.04 %	80.87 %
EXPENSES INCURRED	34,256,090	5,105,836	5,246,286	5,725,648	7,064,376	9,356,651	10,261,872	14.899.144	91,916,705
% of Net Premiums Written	16.77 %	19.74 %	19.23 %	19.14 %	19.27 %	18.60 %	18.00 %	19.05 %	18.04 %
% of Total Income	15.98 %	18.15 %	17.70 %	17.58 %	17.76 %	17.09 %	16.68 %	17.63 %	15.86 %
SURPLUS (DEFICIT) BEFORE RESERVE ADJUSTMENT	7,073,589	2,655,891	1,639,506	(2,054,084)	(2,148,030)	2,962,252	(5,612,632)	7.886.024	12.402.516
OTHER									
Provision for Contingency and Catastrophe Reserves	2,500,000	2,500,000	-	-	-	-	-	2,000.000	7,000,000
Driver Education and Training	693,247	-	-	-	-	-	-	-	693,247
Total Other	3,193,247	2,500,000	-	-	-	-	-	2,000.000	7,693,247
SURPLUS OR (DEFICIT)	$ 3,000,342	$ 155,891	$ 1,639,506	$ (2,054,084)	$ (2,148,030)	$ 2,962,252	$ (5,612,632)	$ 5.886,024	$ 4.709.269
Less: Provision for Premium Equalization ($2,000,000 established December 31, 1967 – decreased $2,000,000 April 30, 1973) – Increased $1,000,000 December 31, 1975 –									$ 1,000,000

Published by the Saskatchewan Government Insurance Office

I. Reparations for Lost Income or Lost Opportunity to Earn Income

On the basis of the Reported average $10,000 yearly wage in Saskatchewan, reparations are payable under the proposal to persons injured to the extent of not being able to work at their jobs at the rate of $750.00 monthly or, at the actual lost net income after taxes, whichever is less as follows:

(a) A wage earner
The lesser of:

- (i) $750.00 monthly, or;
- (ii) "net" income for the period of disability but not longer than 5 years.

(b) A non-employed person
the lesser of:

- (i) $750.00 monthly, or;
- (ii) the amount by which his net earning capacity is reduced — for the period of disability but not longer than 5 years.

(c) A homemaker
the lesser of:

- (i) $750.00 monthly or;
- (ii) the cost of a domestic servant to do the work — for the period of disability but not longer than 5 years.

(d) A full-time student

(i) Age between 10-15	$120.00 monthly
(ii) Age between 15-18	$300.00 monthly
(iii) Age 18 or older	$600.00 monthly

For the period of disability but not longer than 5 years.

(e) A person confined to bed or wheelchair and not otherwise eligible for payment of any reparations.

$120.00 monthly for the period of the disability but not longer than 5 years.

(f) A permanently incapacitated person whose incapacity extends beyond 5 years is entitled to continued reparations for loss of income or for loss of earning capacity for the duration of that incapacity.

II. Reparations for Out-Of-Pocket Expenses

"Out-of-pocket expenses" include all reasonable expenses incurred as a result of being injured by a motor vehicle and they include such expenses as medical, surgical, dental, professional nursing and ambulance services and the services of a duly qualified doctor or other person authorized to "practise a healing art". Under this, funeral expenses are payable up to $1,000.00.

Expenses of the nature above referred to that are otherwise recoverable under another plan or law or under any insurance contract are not payable under the proposal.

III. Reparations for Death

On the basis of "making good" the economic loss suffered by dependants of a person killed in a motor vehicle accident, the following reparations are payable:

(a) To a surviving spouse

(i) A lump sum of $7,500.00; and

(ii) In addition, where there are no surviving dependent children the lesser of one-half of $750.00 monthly or one-half of the monthly net income of the deceased — for 5 years or until remarriage — whichever first occurs.

NOTE: Further provision is made under the proposal for payment by the insurer of such training and educational programs and incidental related costs as might assist a widow to earn an independent livelihood.

(b) To a surviving spouse with one dependent child

(i) A lump sum payment of $7,500.00; and

(ii) In addition, a monthly payment of one-half of $750.00 or of one-half of the monthly net income of the deceased — for 5 years or until remarriage — whichever first occurs; and

(iii) One-sixth of $750.00 or one-sixth of the monthly net income of the deceased—for 5 years or until the dependent child ceases to be dependent.

NOTE: Further provision is made in the proposal for continued payment on behalf of dependent children beyond the period of 5 years in case of need.

(c) To a surviving spouse with two or more children

(i) A lump sum of $7,500.00; and

(ii) In addition a monthly payment of one-half of $750.00 or of one-half of the monthly net income of the deceased — for 5 years or until remarriage — whichever first occurs; and

(iii) One-sixth of $750.00 or one-sixth of the monthly net income of the deceased for each dependent child — for 5 years or until the dependent children cease to be dependent. But where there are 4 or more dependent children the total reparations payable on their behalf is three-sixths or $750.00 monthly or three-sixths of the monthly income of the deceased — to be shared proportionately by those children.

(d) To a surviving spouse with whom there is living a dependent parent of either the surviving spouse or the deceased

Dependent parents who at the time of death of the deceased are living with and who are members of the family of the deceased be they parents of the deceased or parents-in-law of the deceased — are treated in the same manner as dependent children of the deceased. Payments made on behalf of such dependent parents are made to the surviving spouse or, if that surviving spouse subsequently dies, directly to the dependent parent and for such period of time as the dependency of that parent ceases but for no longer than five years.

(e) To a guardian of dependent children

The sums ordinarily payable to a surviving spouse as reparations for dependent children will be paid to the guardian of those children in the event of there being no surviving parent.

And where a dependent child is living in a household other than in the household of the deceased, the Insurer may pay to the person who has assumed the care of that child the sums it would otherwise pay as reparations to a surviving spouse.

(f) To a parent or parents for the death of a child

Lump sum payments for the death of children are payable as follows:

Child to full age of 5 years	$ 750.00
Child 6 to 10 years	$1,500.00
Child 11 to 15 years	$2,250.00
Child 16 years and over	$3,000.00

all reparations payable as for death excepting the lump sum payments above referred to are reduced under the proposal by amounts received or receivable under Canada Pension Act (Canada); the Old Age Security Act (Canada); any other statute or law providing reparations for death.

Part III Coverage under the Proposal

Part III of the proposal concerns itself with and introduces the concept of payment of reparations irrespective of fault for damage to "tangible" property caused by the operation of a motor vehicle. In a word, "tangible property" is all property other than motor vehicles (excepting motor vehicles when parked).

Loss of or damage to tangible property consists of the physical injury to or the destruction of that property but it does not include the loss of use of same.

The reparations recoverable under this Part for the direct loss of or damage to tangible property are limited to:

(a) the lesser of

  (i) the reasonable cost of repairs, or

  (ii) the replacement cost of the property so lost or damaged with proper deductions for depreciation; or

(b) $50,000.00

whichever is less.

There is a $50.00 deductible applied in the case of loss or damage that does not exceed $500.00.

The exclusions as to payment of reparations under this Part include:

1. Claims for damage to motor vehicles (excepting motor vehicles when parked).

2. Claims for damages to the surface of road beds, bridges, private lanes, driveways, parking lots, etc.

3. Claims for damage to property of a person who at the time of the damage is in the course of committing a criminal offence (other than a driving offence) or who is escaping or avoiding lawful arrest.

4. Claims for damage to property arising out of the use or operation of machinery which is mounted on or attached to a motor vehicle with a separate power or heating unit.

5. Claims for damage to property arising out of the course of an officiated racing or speed test.

6. Claims for damage to property that is damaged by the use or operation of a motor vehicle that is owned or rented by or in the rightful possession of the owner of that property.

In the case of parked motor vehicles that are damaged through the use and operation of another motor vehicle and when the identity of the owner or driver of that motor vehicle cannot be ascertained, no reparations are payable unless the damage exceeds $200.00. But if damages do exceed $200.00 then the entire amount of reparations is payable.

Further, under this Part, no reparations are payable in respect of loss or damage which is covered by insurance under any contract of insurance within the meaning of The Saskatchewan Insurance Act.

Coverage under Part IV of the Proposal

The comprehensive insurance which is presently provided under Part III of The Automobile Accident Insurance Act is carried over almost entirely into Part IV of the proposal.

This coverage provides for payment of reparations on a first party basis, subject to a deductible for loss or damage to one's own motor vehicle caused by any peril.

Liability Insurance

The proposal is that each Saskatchewan motorist will be given under the basic coverage a sufficient amount of liability coverage to cover the minimum requirements of any jurisdiction in which he may be travelling. In the event of a crash involving a foreign vehicle and occuring out of the province, Saskatchewan occupants of a Saskatchewan vehicle have the option of pursuing the remedy at law available in that jurisdiction or claiming reparations under the proposal. In the event of an election for the latter remedy, the Insurance Office is subrogated to any right of action that the Saskatchewan resident has.

Voluntary Coverage

Any person desiring more extensive coverage than is provided under the proposal may purchase his higher coverage on a first party basis, e.g., higher income replacement, higher permanent disability allowance, higher death benefits, loss of use coverage, lower deductibles. Additionally, more extensive third party liability coverage could be purchased for out of province. It is assumed that such voluntary coverage could be procured from any insurer doing business in the province.

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